

**ILLINOIS LABOR RELATIONS BOARD
PETER R. MEYERS, ARBITRATOR**



In the Matter of the Interest
Arbitration between:

**METROPOLITAN ALLIANCE
OF POLICE, WESTERN
SPRINGS POLICE CHAPTER
#456,**

Union,
And

**VILLAGE OF WESTERN
SPRINGS,**

Employer.

Case No. **S-MA-09-019**

DECISION AND AWARD

Appearances on behalf of the Union

Steven Calcaterra—Attorney
Nicholas A. Caputo—MAP Attorney
Edward Broche—Chapter 456 President
Joe Rourke—Sergeant
Mark Battista—Sergeant

Appearances on behalf of the Employer

Jill D. Leka—Attorney
Ingrid Velkme—Director, Administrative Services
Pamela Church—Director/Chief, Law Enforcement Services
Brian J. Budds—Deputy Director, LES
Grace Turi—Director of Finance

This matter came to be heard before Arbitrator Peter R. Meyers on March 15 and 17, 2010, at the offices of the Village of Western Springs located at 740 Hillgrove Avenue, Western Springs, IL 60558. Ms. Jill D. Leka presented on behalf of the Employer, and Messrs. Steven Calcaterra and Nicholas A. Caputo presented on behalf of the Union.

Introduction

In December 2009, the Village of Western Springs, Illinois (hereinafter “the Village”), and the Metropolitan Alliance of Police, Chapter 456 (hereinafter “the Union”) entered into negotiations over what would be the parties’ first collective bargaining agreement, which covers a bargaining unit composed of five sergeants working within the Village’s Police Department (hereinafter “the Department”). Although the parties were able to resolve and agree upon many of the provisions that will make up their new collective bargaining agreement, there nevertheless are unresolved issues remaining between them.

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter was submitted for Compulsory Interest Arbitration and came to be heard by Neutral Arbitrator Peter R. Meyers on March 15 and March 17, 2010, in Western Springs, Illinois. By on or about June 1, 2010, the parties submitted written, post-hearing briefs in support of their respective positions on the issues remaining in dispute.

Relevant Statutory Provisions

ILLINOIS PUBLIC LABOR RELATIONS ACT 5 ILCS 315/1 *et seq.*

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Issues Submitted for Arbitration

The following economic issues remain in dispute between the parties:

1. Article VIII, Section 2 – Normal Workday;
2. Article XIII, Section 8 – Outside Employment
3. Article VIII, Section 11 – Roll Call Preparation Time;
4. Article IX, Section 2 – Emergency/Bereavement Leave;
5. Article X, Section 6 – Personal Days;

6. Article XI, Section 1 – Salaries;
7. Article XI, Section 2 – Step Increments;
8. Article XI, Section 4 – Specialty Stipends;
9. Article XI, Section 5 – Longevity;
10. Article XII, Section 1 – Insurance; and
11. Article XII, Section 7 – Dental Insurance.

The following non-economic issues remain in dispute between the parties:

1. Article V, Section 1 – Definition of “Grievance”;
2. Article V, Section 6 – Election of Grievance Arbitration for Discipline;
3. Article VIII, Section 10 – Distribution of Overtime;
4. Article VIII, Section 12 – Shift Preference;
5. Article IX, Section 4 – Non-Employment Elsewhere;
6. Article XIII, Section 2 – Discipline;
7. Article XIII, Section 12 – Board of Fire and Police Commissioners;
8. Article XIII, Section 15 – Paycheck Availability; and
9. Article XIII, Section 22 – Physical Fitness Requirements.

Discussion and Decision

This Arbitrator has carefully reviewed the parties’ final proposals as to the issues that remain unresolved between them, as well as their submissions in support of their respective positions. Of the issues to be resolved here, eleven are economic in nature, meaning that this Arbitrator must select either the Village’s final offer or the Union’s final offer as the resolution for each of these issues. Under Section 14(g) of the Act, this

Arbitrator is without authority to devise a compromise resolution different from the parties' final offers as to the economic issues. The nine other remaining issues in dispute are non-economic in nature, so this Arbitrator may select either of the parties' final offers as to each of these issues or may fashion a compromise resolution of his own.

The evidentiary record reveals that the bargaining unit in question is composed of five sergeants working within the Village's Police Department. Specifically, four sergeants work as patrol sergeants, while the fifth is an administrative/investigative sergeant. The record further reveals that there is a second bargaining unit within the Police Department, which includes fifteen to seventeen patrol officers. This second bargaining unit is covered by a collective bargaining agreement between the Village and the Metropolitan Alliance of Police, Chapter 360.

The record additionally indicates that the parties already have engaged in a lengthy dispute over this first collective bargaining agreement between them. In October 2005, the Union initiated this process when it filed a majority interest petition seeking to organize the sergeants employed within the Village's Police Department. After protracted hearing and appeal proceedings before the Illinois Labor Relations Board that dealt with disputes relating to the appropriateness of the bargaining unit and whether the sergeants held supervisory status, the Illinois Appellate Court issued a decision in late September 2009 that affirmed the ILRB's holding that the sergeants in question were not supervisors under the Illinois Public Labor Relations Act and certifying the Union as the exclusive collective bargaining representative for all full-time sworn police officers holding the rank of sergeant within the Village's Police Department. The Illinois

Supreme Court denied the Village's Petition for Leave to Appeal this decision.

The record suggests that during 2008 and most of 2009, the Union unsuccessfully sought to engage the Village in collective bargaining negotiations and/or mediation, but the Village either did not reply to these efforts at all or suggested that these steps be delayed until after the appellate court issued its decision. Some time during 2009, the parties ultimately agreed to engage in interest arbitration. The parties also met for their first negotiating session on December 1, 2009. During this and subsequent bargaining sessions held in January and February 2010, the parties reached tentative agreements on a number of issues. Pre-hearing matters in the instant proceeding initially were addressed before this Arbitrator on December 3, 2009, and the parties exchanged their final offers on the remaining impasse issues on March 12, 2010.

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h) (hereinafter "the Act"), sets forth certain statutory factors that serve as the framework for evaluating final proposals in proceedings such as this one. Not all of the listed statutory factors will apply to this matter with equal weight and relevance; one or more of these factors, in fact, may not apply here at all. The proper first step in analyzing the impasse issues in dispute, therefore, is to determine which of the statutory factors are relevant and applicable to the instant proceeding and which are not particularly relevant.

There are certain statutory factors that seem to have little or no applicability to this matter. The lawful authority of the Village, for example, does not appear to be at issue, and the evidentiary record herein contains nothing that would suggest that there has been any change in the parties' circumstances during the pendency of this matter that would

affect its outcome.

As for the Village's financial ability to meet the costs associated with the various proposals here, the Village has not presented evidence that specifically establishes that it is financially unable to meet those costs. During the hearing and in its post-hearing brief, in fact, the Village did not adequately assert an inability to pay pursuant to Section 14(h)(3) of the Act, nor did the Village submit into evidence sufficient financial documentation of the type and extent that is necessary for it to prove an inability to pay. Under these circumstances, the Village's ability to pay therefore is not specifically at issue. The Village, however, did refer to financial hardships and constraints associated with the current recession. The economic situation that now faces all employers, public and private, is one factor that "normally or traditionally" should be taken into account when considering wages, hours, and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and consideration here.

One statutory factor that often plays an important role in interest arbitrations, and does so here, is the comparison of employment data from this bargaining unit to employment data from comparable external communities, as well as a similar comparison with internal comparables in the form of other bargaining units of Village employees. The selection of appropriate comparable external communities obviously is critical in this proceeding, especially because the parties' first collective bargaining agreement is at issue. This Arbitrator is mindful of the fact that the proper identification of external

comparables, while always important, is of added significance in this proceeding because this identification will have an impact not only as to the parties' new collective bargaining agreement, but also will serve as the foundation for the identification of external comparables in any future interest arbitration proceeding between these two parties.

In this particular case, the parties are in agreement as to the identification of certain comparable communities, although each party has proposed other potential external comparables. The communities that the parties agree are appropriate external comparables in this matter are Clarendon Hills, LaGrange Park, Palos Heights, Westchester, and Palos Hills, all located within the State of Illinois. The Union has proposed Lemont, Mokena, Prospect Heights, River Forest, Warrenville, Willowbrook, and Winfield, all in Illinois, as potential additional external comparables. The Village has proposed LaGrange, River Grove, and Riverside, in Illinois, as possible additional external comparables.

Before proceeding with an analysis of the suitability of the proposed additional external comparables, this Arbitrator notes that in two of the agreed-upon external comparables, Clarendon Hills and LaGrange Park, police sergeants are not represented by unions. This fact, by itself, does not have a negative impact on the effective comparability of these two communities to the Village as it moves toward the implementation of its first collective bargaining unit with the Union representing its sergeants. Instead, because there has not been a contract in place that covers the Village's sergeants to this point, Clarendon Hills and LaGrange Park help to round out

the comparison of the terms and conditions of employment across both unionized and non-unionized sergeant groups against what has been and will be offered to sergeants by the Village as its sergeants transition into working under their first collective bargaining agreement.

The parties have provided a wealth of demographic, economic, and other relevant data in connection with their proposed additions to the list of external comparables. All of this shows that Western Springs is within the range of the agreed-upon external comparables in terms of the many demographic, financial, economic, and other factors highlighted by the data in the record. In determining which, if any, of the possible additional external comparables to add here, it is important to avoid skewing the data in either direction by adding a community that falls outside the existing range of numbers. The external comparables are, after all, supposed to be comparable to the Village in all the geographical, demographic, and economic criteria represented by the data.

The geographic location of some of the proposed comparables is enough, by itself, to indicate that they are not truly comparable to the Village of Western Springs. There are real, measurable differences between communities in various regions of the extensive Chicago metropolitan area. Geography alone will not justify the inclusion of a particular community among the external comparables; it is not uncommon for communities that are located next to one another to nevertheless differ greatly in such critical areas as equalized assessed valuation, per capita income, and budget. Geography may, however, be an important factor in precluding certain communities from being added to the list of external comparables here.

Among the proposed external comparables, Prospect Heights and Mokena are located further from Western Springs than any of the agreed comparables and proposed comparables. These two communities are between twenty and twenty-five miles from Western Springs. Prospect Heights, far to the northwest of Chicago, and Mokena, far to the southwest, may fall within certain of the data ranges established by the agreed-upon external comparables, but their significant distance from Western Springs and the fact that neither of these communities is located within the western suburbs of Chicago suggest that they do not necessarily share certain characteristics that link the western suburbs and that contribute to the unique nature and lifestyle of the west suburban region. Accordingly, I find that Prospect Heights and Mokena shall not be included among the appropriate external comparables because of, at least in part, their geographic distance from Western Springs.

Warrenville and Winfield are two more proposed external comparables that should be excluded here because of, at least in part, their geographic location. Although these two communities are located within the western suburbs of Chicago, they are much further west than Western Springs and the other communities that the parties have agreed are appropriate external comparables. In fact, these two communities each are located nearly twenty miles from Western Springs. It is important to note that Warrenville is a home-rule municipality, setting it apart from the non-home-rule status of Western Springs and all of the other communities in question. Economic and crime data for these two communities also is not particularly comparable with that of Western Springs and the range established by data from the agreed-upon communities, so I find that there is no

compelling basis for including Warrenville and Winfield among the appropriate external comparables in this proceeding.

Certain critical elements of data, including crime statistics, sales tax figures, and EAV (both total and per capita), also suggest that River Forest and River Grove are not appropriate external comparables to Western Springs. In many important categories, one or both of these communities fall well outside the range of data established by Western Springs and the agreed-upon comparables. Accordingly, I find that the data in the record does not support the inclusion of River Forest and River Grove among the appropriate external comparables in this matter.

Willowbrook is another proposed comparable that I find ultimately must be rejected here. Among other differences, sales tax figures are significantly higher for Willowbrook than for any of the proposed or agreed-upon comparables (except for Mokena), suggesting that the nature and character of this community is unlike that of Western Springs, particularly in terms of the extent of its commercial development.

The remaining proposed external comparables are Lemont, LaGrange, and Riverside. All three of these communities are geographically close to Western Springs. Lemont is the most distant, but at about thirteen and one-half miles, it is only slightly further from Western Springs than is the agreed-upon comparable of Palos Heights. The economic, financial, and demographic data confirm these three communities as generally within the range established by the agreed-upon external comparables, and the addition of these communities will not skew the data range as to any of the factors for which data has been submitted. The reported crime data for these three communities also is comparable

to that for Western Springs and the agreed-upon external comparables. In fact, the overall data submitted for these communities demonstrate that they are appropriately comparable to Western Springs and should be added to the list of appropriate external comparables in this proceeding.

In light of these considerations, and after a complete review and analysis of the data submitted in connection with Western Springs, the agreed-upon external comparables, and the proposed external comparables, this Arbitrator finds that the communities of Lemont, LaGrange, and Riverside shall be added to the list of appropriate external comparables for the purposes of this interest arbitration proceeding.

The other bargaining unit within the Department, covering patrol officers, is a relevant internal comparison. Although a bargaining unit composed of sergeants obviously is inherently different in several respects from a bargaining unit of patrol officers, many of the same interests and concerns will affect these two units of Village and Department employees. Keeping in mind the differences between these two units, the existing collective bargaining agreement between the Village and MAP Chapter 360 will offer helpful information in this proceeding.

As for the remaining statutory factors, the interests and welfare of the public always will be an important concern in this type of proceeding. The overall compensation that the employees currently receive and the impact of the cost of living, or the consumer price index, also will be relevant to the proper resolution of the remaining impasse issues, particularly those that are economic in nature. In addition, the parties have entered into a number of stipulations, including their agreement on four of the

proposed external comparables, that play an important role in this proceeding.

Altogether, the relevant statutory factors together provide a detailed framework for the analysis of the parties' competing proposals on the impasse issues that remain in dispute.

During the hearing, the parties gave considerable attention to the question of whether certain areas of dispute should be considered as separate and distinct issues or whether two or more of these disputes should be combined and considered as one issue. In the interests of clarity, each contract provision in dispute should be discussed separately from the rest. Accordingly, this Arbitrator shall identify and analyze each contract provision in dispute as a separate impasse issue. It is important to note, however, that this does not mean that each issue stands completely alone, distinct from and unaffected by the others. A collective bargaining agreement must stand as a unified whole, without contradictions between and among its various provisions. In this particular case, for example, salary, step increments, longevity, and specialty stipends are identified and discussed separately, but these issues overlap to such a significant degree that they cannot be resolved properly without an equally significant degree of coordination between them.

The Village has raised the issue of "breakthroughs," proposals that would substantially change the status quo. In interest arbitration proceedings, a party proposing a change in the status quo typically must support the proposed breakthrough change with evidence showing a substantial and compelling justification for the change. It is important to point out that breakthroughs generally are understood in the context of a negotiated status quo, a status quo that was established and historically has existed

through prior collective bargaining agreements between the parties to an interest arbitration proceeding.

That is not the situation presented here because, of course, the collective bargaining agreement at issue will be the parties' first. The status quo in this matter therefore is not the product of negotiated agreements and mutual understandings between the parties. Instead, the status quo as to the terms and conditions of the sergeants' employment by the Village has been imposed by the Village alone. For this reason, it is not appropriate to hold either party proposing a break with existing circumstances to the higher burden associated with "breakthrough" proposals. Because there is no negotiated, mutually agreed upon status quo, there really cannot be any true breakthrough proposal in this particular proceeding.

To the extent that any of the proposals submitted here can be deemed a "breakthrough" of a sort, that will be based upon whether a proposal departs from those terms and conditions of employment that the evidentiary record here shows are common and widespread enough among the external and internal comparables as to be nearly universal. Where either party offers a proposal that is at odds with what appears, or does not appear, in any of the agreements governing the comparables, a proposal that breaks with the prevailing practice, then that party will have to establish a legitimate justification for the adoption of that proposal. This is a slightly higher burden than the showing of greater reasonableness and appropriateness, based on the application of the relevant statutory factors, that often is applied in interest arbitration proceedings.

One final consideration must be addressed before there can be any analysis of the

impasse issues remaining in dispute between the parties. At the start of the hearing before this Arbitrator, the parties were able to agree, by stipulation, as to whether most of the unresolved issues between them were economic or non-economic in nature. In most interest arbitration proceedings, in fact, issues are divided between economic and non-economic based solely on the stipulations of the parties. The parties were unable to agree on such a stipulation as to three of the remaining issues: normal workday, non-employment elsewhere, and outside employment. As a result, this Arbitrator shall determine whether each of these three issues is economic or non-economic in nature.

Because collective bargaining agreements address the terms and conditions of employment, it might be possible to see every collective bargaining issue as involving an economic component. The existence of some small measure of financial impact on one or both of the parties or on individual employees may not be sufficient to justify characterizing an issue as economic where the overall impact of the issue and the totality of the circumstances surrounding that issue are non-economic in nature.

The overall impact and the totality of the circumstances associated with the issue of the length of the normal workday conclusively demonstrate that this issue should be viewed as economic in nature. Whether a normal workday is defined as eight hours, twelve hours, or something in between will have a direct impact upon the Village's finances and each individual employee's income. The length of the normal workday determines when the regular rate of pay will apply, when the overtime rate of pay will apply, and therefore the total wage compensation due to an individual employee. The length of the normal workday must be characterized as economic in nature.

The overall impact and the totality of the circumstances associated with the issue of non-employment elsewhere, which involves whether an employee may engage in secondary employment while on an unpaid leave of absence, suggests that this issue should be viewed as non-economic in nature. Even though an individual employee's financial condition may be significantly affected by the terms of the contractual provision that will govern this issue, the fact is that this particular issue does not directly affect the finances of either party or the financial components of the relationship between the Village and its sergeants. This particular issue relates to unpaid leave, so the Village's finances and the financial relationship between the Village and its employees are not directly affected by this particular issue. Accordingly, I find that the issue of non-employment elsewhere must be characterized as non-economic in nature.

The last of these three issues also deals with secondary employment. The overall impact and the totality of the circumstances suggest, however, that the issue of outside employment should be considered as economic in nature. This issue specifically involves whether sergeants will be required to have an outside employer execute a liability waiver pursuant to the Village's General Order addressing outside employment. Although the particulars of this issue do not immediately affect either party's finances or the financial components of the relationship between the Village and its sergeants, the possible future economic impact arising from the presence or absence of such a waiver is great enough that I find that this issue must be deemed economic in nature.

This Arbitrator now moves on to a focused analysis of each of the remaining issues in dispute, in light of the relevant statutory factors, the evidence in the record, and

the parties' arguments in support of their respective proposals.

A. ECONOMIC IMPASSE ISSUES

1. Article VIII, Section 2 – Normal Workday

The Union's final offer on the impasse issue of "normal workday" is as follows:

The normal workday for employees shall be twelve (12) hours, including two paid 15-minute break periods and two paid 30-minute meal breaks taken at times approved by the immediate supervisor. Employees remain subject to call during all break times and the fact that employees are not able to take said breaks as a result of calls or the assignment of other duties shall not result in the payment of any overtime, compensatory time or additional compensation. Work shifts shall be selected by seniority on an annual basis and shall be either 6:00 – 1800 hours, or 1800 – 0600 hours.

The Village's final offer on the impasse issue of "normal workday" is as follows:

The normal workday for employees shall be between 8 and 12 hours, at the discretion of the Police Chief or his designee. An eight (8) hour workday will include two paid 15-minute break periods and one paid 30-minute meal break taken at times approved by the immediate supervisor. A twelve (12) hour workday will include two (2) thirty minute meal breaks and two (2) fifteen minute breaks taken at times approved by the immediate supervisor. Employees remain subject to call during all break times and the fact that employees are not able to take said breaks as a result of calls or the assignment of other duties shall not result in the payment of any overtime, compensatory time or additional compensation.

The resolution of this particular issue involves much more than an analysis of the parties' competing proposals and a determination as to which one is more reasonable in light of the relevant statutory factors and the competent, credible evidence in the record. The unique complexities associated with this issue arise from the fact that the provision governing the length of the sergeants' workday that ultimately appears in the parties' new contract must be consistent with the provision governing shift selection that also will appear in that new contract. The Village has submitted separate, but consistent, proposals

on these two issues, while the Union has united its final offers on these two issues into one single proposal. A further complicating element is that the parties have been unable to agree as to whether the issue of normal workday is an economic issue, although they appear to agree that the issue of shift preference is a non-economic issue.

As previously discussed, this Arbitrator has determined that this particular issue is economic in nature. Accordingly, the resolution of this issue is limited to the adoption of either the Union's or the Village's proposal, without alteration and whichever is more appropriate in light of the relevant statutory factors and the evidence in the record. Because the Union's proposal incorporates its proposals on both the normal workday and shift selection, it also is necessary to consider here the comparative appropriateness of the parties' proposals on shift selection.

The Union's proposal essentially seeks to continue the non-negotiated status quo. The record demonstrates that the Village's sergeants historically have worked twelve-hour shifts. The fact that the Union's proposal offers such continuity and stability argues in favor of its proposal on the issue of normal workday. The Union's proposal, however, does not expressly confirm the Police Chief's discretion to alter the normal workday, which the Village maintains also is part of the status quo.

Reviewing the provisions governing length of workday among the external comparables, it is evident that there is no general consensus regarding the number of hours that make up an appropriate shift. The length of the normal workday in effect across the external comparables ranges from eight to twelve hours, but each of these communities has established a single span of hours as the length of a normal shift for its

sergeants. The Union's proposal is in conformity with the external comparables in this respect, establishing twelve hours as the duration of a normal workday for the Village's sergeants. The Village's proposal, however, departs from the external comparables by establishing a normal workday as falling anywhere within a range of hours, rather than setting the normal workday as one particular span of hours. The Village's proposal also departs from what appears in the contract covering the Village's patrol officers, which sets their normal workday as being eight hours in duration. The external and internal comparisons therefore both argue in favor of the Union's proposal.

By setting the length of the normal workday as extending anywhere from eight hours to twelve hours, the Village's proposal also carries significant potential for uncertainty in that the sergeants may find that their normal workday and their overall work schedule has changed dramatically if the Chief, in his or her discretion, determines that a workday of eight hours, or ten hours, or nine and one-half hours, shall be imposed in place of the twelve-hour shifts that the sergeants historically have worked.

This potential for uncertainty and upheaval argues strongly in favor of the Union's proposal. Stability and certainty regarding the hours that one must work certainly is important to the sergeants themselves, but this stability and certainty also is an administrative and operational benefit to the Department. The importance of this consideration is underlined by the fact that the normal workday for the Village's patrol officers is contractually set at eight hours.

There is one problem with the Union's proposal, however, that cannot be overcome. The Union's inclusion of its proposal for seniority-based shift selection

within its proposal regarding length of shift renders the Union's overall proposal as inappropriate under all of the relevant statutory factors and evidence. The Union's seniority-based approach to shift selection completely departs from what appears in any of the contracts governing sergeants in the externally comparable communities. Moreover, there is no similar provision in the contract covering the Village's patrol officers. The Union's proposal on shift selection also fails in that it does not expressly acknowledge any discretion on the part of the Police Chief to change the normal duration of work shifts in order to respond to operational needs or any other contingency. This lack of flexibility in the Union's approach to shift selection represents a serious negative.

Because the Union's shift selection language is included in its proposal on the economic issue of normal workday, this Arbitrator is without the authority to alter this language or sever it altogether from the Union's proposal on normal workday. If the Union's shift selection language had appeared separately, then this Arbitrator would have been able to opt for the Union's proposal on normal workday. With the exception of the shift selection language, the Union's proposal on normal workday is more reasonable than the Village's proposal on this issue.

There is one other consideration that unequivocally argues in favor of the adoption of the Village's proposal on the issue of normal workday. The parties' new collective bargaining agreement must be internally consistent in order to fulfill its role of helping to govern the parties' cooperative working relationship as they move forward. To that end, the provision governing the length of the normal workday must be consistent with the agreed-upon language that the parties have included as Article VIII, Section 4, of their

new contract, which allows Village to change the normal workday, the normal workweek, the normal work cycle, and/or the shift schedule under certain circumstances. The discretion that is granted in one section of the contract must be consistently reflected in other sections of the contract that address the same or similar concerns. There are sound operational reasons to allow the Police Chief discretion to change the length of the normal workday in response to certain contingencies, and the Village's proposal reasonably incorporates that discretion.

Based on the foregoing discussion, this Arbitrator finds that the Village's proposal on the issue of normal workday is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

2. Article XIII, Section 8 – Outside Employment

The Union's final offer on the impasse issue of outside employment is as follows:

No employee shall engage in outside employment (which includes self-employment) unless the Director of Law Enforcement Services, in accordance with such rules and regulations as he may from time to time prescribe, has approved outside employment. Any sergeant promoted before April 1, 2009, shall not be required to have the outside employer execute the liability waiver included within the Village of Western Springs General Order. The current General Order addressing outside employment is attached hereto as Appendix C.

The Village's final offer on the impasse issue of outside employment is as follows:

No employee shall engage in outside employment (which includes self-employment) unless the Director of Law Enforcement Services, in accordance with such rules and regulations as he may from time to time prescribe, has approved outside employment. The current General Order addressing outside employment is attached hereto as Appendix D.

The provision in dispute here addresses another aspect of secondary employment.

The parties are unable to agree whether a sergeant who has a second job outside the Department will or will not be required to execute the waiver liability included within the Village's General Order addressing outside employment. The Union's proposal would "grandfather in" those sergeants promoted prior to April 1, 2009, the effective date of the parties' new collective bargaining agreement, by making it unnecessary for these sergeants to have their outside employers execute the liability waiver contained in the General Order. The Union suggests that its proposal would maintain the non-negotiated status quo in that the sergeants apparently have not been previously required to have their secondary employers execute these waivers.

The Village, which would require the sergeants to have their secondary employers execute the liability waiver, points to the fact that its proposal seeks to follow the existing General Order under which the sergeants have worked. The Village acknowledges that some of the sergeants were not required to have their secondary employer execute the liability waiver after the Village's policy changed to include this requirement in connection with the Department's obtaining CALEA accreditation in 2004. The Village asserts, however, that it "grandfathered" these employees from the requirement of signing the actual agreement, but not from addressing the contents of the indemnification agreement, and that it did so only after investigating the secondary employers and determining that these employers were reputable and had addressed the Village's concerns.

This Arbitrator cannot find anything unreasonable or illogical in the General Order's requirement that secondary employers execute liability waivers. It is sensible for

the Village to seek a degree of protection in connection with whatever secondary employment its employees engage in, and particularly as to those second jobs that draw on the skills that these employees have acquired in the course of their employment in the Department.

A review of the external comparables reveals that on the issue relating to outside employment, there is no one single approach that has been adopted across the board. Some of the external comparables require all secondary employers to complete an indemnification agreement, one requires an indemnification agreement only from outside security and traffic control employers, one requires the employees to agree to indemnify the village, and others do not address the issue in their collective bargaining agreements at all. Such a wide range on this issue does not provide much in the way of helpful guidance.

As for the internal comparison with the patrol officers' agreement, the Village's proposal on this issue is identical to what appears in that other contract. Administratively and operationally it makes sense for all of the Department's sworn employees to be required to adhere to the provisions of the Department's General Order on this issue, rather than have a patchwork approach that exempts certain sergeants based on their date of promotion.

The Union's proposal also carries with it the potential for future problems in that it does not expressly allow for the type of investigation and assurances that prompted the Village to agree to make an exception to the requirement of a liability waiver in favor of a particular secondary employer when it initially began to require a liability waiver in

2004. Instead, the Union's proposal provides for a blanket exception to the liability waiver requirement, without regard for the identity of and circumstance surrounding a sergeant's secondary employer.

The Union's proposed blanket exception is inappropriate because it fails to address any of the concerns relating to potential liability claims on the Village arising from a sergeant's secondary employment. The fact that patrol officers and any officers promoted to sergeant after April 1, 2009, will have to comply with the General Order's requirement to have their secondary employers execute a liability waiver constitutes a strong argument in favor of applying the same requirements to the sergeants as part of the parties' new collective bargaining agreement.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of outside employment is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

3. Article VIII, Section 11 – Roll Call Preparation Time

The Union's final offer on the impasse issue of roll call preparation time is as follows:

Sergeants shall receive an additional 2.0 hours of pay per pay period (at the overtime rate of pay) as a biweekly stipend to compensate for unreported time worked in preparation for roll calls, coordination of information between work and other duties which require attention both before and after shift begins. Preparation time shall be paid at the sergeant's overtime rate, not to be taken as compensatory time, and will be considered salary in addition to the sergeants' base rate of pay. The covered employees agree that they will not submit additional requests for overtime until more than fifteen (15) minutes of additional time has been worked beyond the regular work shift on any given workday.

The Village's final offer on the impasse issue of roll call preparation time is as follows:

Sergeants will be compensated for roll call preparation in accordance with the 28 day FLSA work cycle referenced in Section 3 above. Roll call preparation time outside the regular work schedule must be approved by the Police Chief or his designee.

By proposing language that would provide for the payment of two hours of overtime pay for each pay period to compensate sergeants for "unreported time" that they may spend doing such things as preparing for roll call and coordinating information, the Union essentially is seeking permanent overtime for the members of the bargaining unit. The Union's proposal would result in an additional, and significant, pay increase for the sergeants.

The evidentiary record shows that there currently is no policy or mechanism in place to compensate the sergeants for such time. Before reaching an analysis of the relevant statutory factors, it is necessary to note that the evidentiary record does not fully establish exactly what type of work this form of pay would compensate or how much time (whether actual, estimated, or on some sort of average basis) sergeants spend engaging in any such activities. In fact, the evidence in the record does not completely explain how the Union arrived at its proposal that such pay should be set at two hours every pay period.

The notion of a "breakthrough" proposal also has an impact on the discussion of this particular issue. As noted, because the parties' first collective bargaining agreement is at issue here, a proposal in this particular proceeding may not accurately be deemed a

“breakthrough” even though the proposal suggests a term, condition, or benefit of employment not currently enjoyed by the members of the bargaining unit. With regard to the question of whether the sergeants should receive an additional two hours of overtime pay each pay period to compensate them for roll call preparation, this Arbitrator finds that this does constitute a “breakthrough” proposal, based upon the circumstances surrounding this issue.

The principal reason for identifying the Union’s proposal here as a “breakthrough” is the fact that there appears to be no established, widespread precedent for such compensation. Only one of the external comparables, Westchester, compensates its sergeants for roll call preparation. Westchester pays its sergeants for an extra ten minutes per shift, although the record is unclear as to whether this additional time is paid for at the regular hourly rate or at the overtime rate. As for internal comparables, there is no evidence that any other Village employees, including the Department’s patrol officers and command-level staff, receive this type of compensation. The scant evidence in the record on this issue demonstrates that it is not at all common for sergeants to be paid additional compensation for “unreported time” spent preparing for roll call, exchanging information, or engaging in other activities. Accordingly, this Arbitrator finds that the Union’s proposal on the issue of overtime payment for roll call preparation time must be deemed a “breakthrough” proposal.

In light of this finding, the Union must demonstrate a substantial justification for changing the status quo that exists on this point. The evidentiary record, however, does not establish any such justification. The record does not contain sufficient specific

evidence to determine exactly what type of duty-related activities the sergeants may be performing during the course of this "unreported time," nor is it clear how much "unreported time" each sergeant individually, or the five sergeants collectively, typically may spend engaging in duty-related activities either before or after their scheduled shifts. The evidentiary record also does not demonstrate that any such activities can be performed only before or after the sergeants' scheduled shifts, or whether some or all of these matters may be addressed while the sergeant officially is on duty. In addition, there is no evidence that the Village requires the sergeants to perform duty-related activities either before or after their scheduled shifts.

Of the statutory factors that are relevant to this particular issue, none weigh in favor of the Union's proposal. As previously noted, Westchester is the only one of the external comparables to offer this type of compensation to its sergeants, and the record does not show that the level of such compensation in Westchester is at all comparable to what is set forth in the Union's proposal. The overall level of compensation applicable to the sergeants also does not support the adoption of the Union's proposal. The Village's sergeants do not lag so far behind their colleagues in terms of total compensation that this relatively unprecedented form of compensation should be introduced into the parties' new collective bargaining agreement. None of the rest of the statutory factors, including the cost of living and the public's interest, argues in favor of the adoption of the Union's proposal on this issue.

One additional consideration is important here. The Union's proposal is inconsistent with the hours and overtime elements of the twenty-eight day work cycle

that the parties mutually have adopted. Under this system, sergeants are compensated at the overtime rate for the hours that they work, including compensable roll call time, in excess of 171 hours in a single work cycle.

There is no basis in the factual record for finding that the sergeants necessarily must engage in pre- and/or post-shift duty-related activities, especially to such an extent as to justify the payment of two hours of overtime for each pay period. Without this type of evidence, and in light of the impact of the relevant statutory factors on this issue, I find that it is inappropriate to adopt the Union's breakthrough proposal on this issue.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of roll call preparation time is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

4. Article IX, Section 2 – Emergency/Bereavement Leave

The Union's final offer on the impasse issue of emergency/bereavement leave is as follows:

An employee may be granted an emergency leave of absence of up to three (3) days without loss of pay in cases of death or serious illness of a member of the employee's family, defined as the employee's spouse, child, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandparent, or other relative that the Village Manager may on a case-by-case basis approve. The purpose of such leave shall be to attend the funeral (including making arrangements for the funeral) in case of death or to permit the employee to be present in case of serious illness.

The Village's final offer on the impasse issue of emergency/bereavement leave is as follows:

An employee may be granted an emergency leave of absence of up to three (3) days without loss of pay in cases of death of a member of the employee's family, defined as the employee's spouse, child, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandparent, or other relative that the Village Manager may on a case-by-case basis approve. The purpose of such leave shall be to attend the funeral (including making arrangements for the funeral). A determination of the number of days shall normally be made within 5 business days.

The parties' competing proposals on the issue of emergency/bereavement leave are distinguished by a couple of significant differences. The Union's proposal allows for the use of such leave in the event of the death or serious illness of a family member, while the Village's proposal limits such leave to situations involving a family member's death. In addition, the Village's proposal provides that a determination of the number of days to be allowed for such leave normally shall be made within five business days; the Union's proposal does not address the matter of how quickly such a determination shall be made.

The purpose of the specific type of leave at issue is to allow employees to respond to certain types of family emergencies without necessarily having to use their own sick time and/or accrued vacation. The record establishes that Village employees generally, including the Department's patrol officers, have been afforded this type of leave in the case of the death or serious illness of a family member. Moreover, the patrol officers' past and current agreements have incorporated the very same provision that the Union proposes here, allowing for the use of such leave in cases of either death or serious illness.

The Village's proposal essentially seeks to remove a benefit from the sergeants

that all of its other employees apparently receive. The fact that none of the external comparables offer emergency leave in the event of the serious illness of a family member does not serve to justify the elimination of an existing benefit for the sergeants. This is especially true where, as here, that very same benefit is contractually guaranteed to the Department's patrol officers, who are subordinate in rank to the sergeants.

The Village's proffered justification for eliminating this benefit for the sergeants is that there have been disputes with other employees over the meaning and application of the term "serious illness." Disputes over the proper meaning and application of contractual language can be serious problems for all concerned. For a collective bargaining agreement to serve such important purposes as assisting the parties in managing their responsibilities to each other and to the members of the bargaining unit, providing some measure of certainty in the administration of benefits, and helping the parties establish and maintain a cooperative relationship, it certainly is critical for the parties to share an understanding of the agreement's language and adopt a good-faith approach to applying that language.

Even where contractual language appears to be clear and unambiguous, it still is possible for parties to disagree as to how to apply that language in certain factual situations. In the case of the phrase "serious illness," it obviously is not possible to describe each and every set of physiological symptoms that will be deemed a "serious illness," and/or a list of such physical conditions that will not be deemed a "serious illness." An approach based on logic, good sense, and good faith shall be required to determine, on a case-by-case basis, whether a particular situation involves a "serious

illness” that will justify the use of bereavement/emergency leave. The fact is that it typically requires experience and judgment gained by applying such language over the course of years that parties are able to establish common ground and mutual understanding of what situations fall within, and what situations fall outside of, a phrase such as “serious illness.”

The Village’s assertion that emergency/bereavement leave should not apply to cases involving a family member’s serious illness because there may be a dispute over the precise meaning and application of this terminology does not serve to justify the elimination of this benefit for sergeants, while the same benefit continues to be available to patrol officers and other Village employees. It is only to be expected that some disputes may develop between the parties as to the meaning and application of certain contractual provisions as they move forward in implementing their first collective bargaining agreement. It is not reasonable, or even possible, to eliminate each and every contractual provision that might be the source of a future disagreement between the parties. If any disagreement over the meaning and/or application of a provision of the parties’ new agreement does arise, and such disagreements will arise, then the grievance arbitration process provides a comprehensive and conclusive means for resolving such issues.

The statutory factor that is most relevant to this impasse issue is the internal comparison with the patrol officers’ collective bargaining agreement. That other agreement contains a provision for emergency/bereavement leave that is identical to what the Union proposes here. The evidentiary record does not offer any justification for

providing a benefit to patrol officers that is not offered to the sergeants who are their superiors in rank. Moreover, administrative efficiency and operational concerns suggest that it is far more advantageous for all concerned if there is a more unified, across-the-board approach to the handling of such leave, rather than a hodgepodge of different rules that apply to different employee groups. The Union's proposal allows for such a unified approach, while the Village's opens the door to future problems and misunderstanding because the very same benefit will be applied so differently to various employee groups.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of emergency/bereavement leave is more appropriate. Accordingly, the Union's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

5. Article X, Section 6 – Personal Days

The Union's final offer on the impasse issue of personal days is as follows:

Each employee covered by this Agreement who was employed on or before December 31 shall be granted three (3) personal days (at eight (8) hours per day) for use during the following calendar year. The personal days must be scheduled at least three (3) days in advance.

The Village's final offer on the impasse issue of personal days is as follows:

Each employee covered by this Agreement who was employed on or before December 31 shall be granted one non-accumulative personal day (eight (8) hours) for use during the following calendar year. The personal day must be scheduled at least three (3) days in advance.

In addition to their disagreement over the number of personal days that should be available to the sergeants, the parties also disagree as to which of their proposals represents the non-negotiated status quo. The Union maintains that because the sergeants

currently receive three personal days, its proposal merely seeks to codify the Village's existing policy within the new Agreement. The Village, pointing out that the union-represented patrol officers receive one personal day while its non-represented employees receive three personal days, argues that this differentiation between represented and non-represented employee constitutes the status quo that should be maintained by reducing the sergeants' personal days from three to one in the parties' first collective bargaining agreement.

There is no logical argument that serves to justify a significant benefit reduction for the sergeants simply because they now are represented by the Union. The Union is correct in pointing out that the Village is not offering any sort of *quid pro quo* that would persuade the Union to accept a reduced benefit here in exchange for something else that would benefit the sergeants that it represents. The fact that the patrol officers' agreement currently provides for only one personal day is not enough evidence, by itself, to justify such a significant reduction in this benefit for the sergeants.

The Village has failed to submit any evidence to support its assertion that there is an established distinction in the number of personal days granted to different groups of employees based on whether those employees are or are not represented by a union and covered by a collective bargaining agreement. The evidentiary record does not establish for how long the Village's patrol officers have received a single annual personal day or if the patrol officers ever received more than that one personal day. The evidentiary record also fails to indicate whether the patrol officers agreed to a reduction in annual personal days to one in exchange for some other tangible benefit that they did not have before.

Moreover, the evidentiary record also does not establish that the patrol officers receive only one personal day solely because they are represented by a union and are covered by a collective bargaining agreement. Without any such evidence, there can be no valid argument that the fact that patrol officers receive only one annual personal day should serve as a model for the sergeants, especially because other Village employees receive three annual personal days.

The evidence relating to the number of personal days offered by the external comparables also fails to support the Village's proposed reduction to this benefit. There is no perceivable consensus as to the number of personal days offered by these communities. Instead, there is a significant degree of variation in personal days offered by the external comparables, ranging from zero to as many as ten (in combination with sick days). None of the other statutory factors have much relevance to the resolution of this particular impasse issue.

Under the circumstances established by the competent and credible evidence in the record, it is clear that the Union's proposal maintains the non-negotiated status quo with regard to the issue of personal days, and the evidence does not show any reason for reducing that benefit.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of personal days is more appropriate. Accordingly, the Union's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

6. Article XI, Section 1 – Salaries

The Union's final offer on the impasse issue of salaries is as follows:

Effective April 1, 2009, employees shall be paid on the basis of the salary schedule indicated within Appendix B of this Agreement.

APPENDIX B

	Step 1	Step 2	Step 3	Step 4	Step %
4/1/2009					(eff. 4/1/11)
Hourly	\$37.33	\$38.82	\$40.37	\$41.99	
Annual*	\$77,639.59	\$80,745.18	\$83,974.98	\$87,333.98	
2.00%					
4/1/2010					
Hourly	\$38.07	\$39.60	\$41.18	\$42.83	
Annual*	\$79,192.39	\$82,360.08	\$85,654.48	\$89,080.66	
2.00%					
4/1/2011					
Hourly	\$38.83	\$40.39	\$42.00	\$43.68	\$45.43
Annual*	\$80,776.23	\$84,007.28	\$87,367.57	\$90,862.28	\$94,496.77

* Annual wage is based upon 2080 hours.

Employees shall advance step on their employment anniversary date or in the case of the Sergeants, movement shall occur on their promotion anniversary date. Wages shall be retroactive to May 1, 2009 only for employee who are employed as off the date of the execution of this Agreement and for employees who have retired (including disability) after May 1, 2009.

The Village's final offer on the impasse issue of salaries is as follows:

Effective April 1, 2009, each sergeant shall receive an equity adjustment of 1.5% to the sergeant's base pay. This salary increase shall be retroactive for all sergeants still on the active payroll of the Village on the effective date of this Agreement. Effective April 1, 2010, employees shall be paid on the basis of the following minimum annual salaries for each of the following steps.

Effective April, 2010

Probationary	\$78,682.80
A	\$80,528.00
B	\$82,373.70
C	\$84,219.15

The Village and Union will reopen negotiations for the purpose of negotiating over the annual salaries to be effective April 1, 2011. If the parties are unable to reach agreement during this reopener, the dispute shall be resolved in accordance with the alternative impasse resolution process set forth in Appendix A, except that the notice dates shall not be applicable.

In evaluating the parties' competing salary proposals, this Arbitrator takes into account the fact that the sergeants in the bargaining unit received a two percent increase in 2009, consistent with the two percent increases received by non-unionized Village employees in 2009. The Village's proposal on this issue calls for an additional 1.5% equity adjustment to the sergeants' salaries effective April 1, 2009.

Each party's proposal suggests a four-step salary structure, but the actual numbers show that there is a significant gap between the parties, particularly at the top step. The Village's proposal does not include a break-out of salary figures at each step for 2009, so it is difficult to make a step-to-step comparison of the bottom-line figures for that year. Both sides' proposals do break out the salary figures at the individual steps for 2010, so these proposed salary numbers offer the opportunity for the most complete comparison between the parties' competing salary proposals.

The gap between the two proposals at the first step is less than \$1,000.00 for 2010, while the gap widens to nearly \$5,000.00 at the top step for the same year. A comparison of these proposals with the 2010 wage data from the external comparables shows that Western Springs is below the average for starting sergeant salaries, as well as for top step sergeant salaries among the identified external comparables. It must be noted that neither side was able to provide 2010 wage data for Lemont. Lemont's wage data from the most recent year available, 2008, show that its sergeant salaries, at both the starting and top levels, were at or above average.

The data from the preceding years, going as far back as 2002, show that Western Springs' starting and top sergeant salaries have been near the bottom of the salary range among the comparables. Both parties' salary proposals attempt to bridge at least some of the gap between Western Springs' salary levels and the average salaries and ranges established by the external comparables' salary levels. From this, it is clear that although the parties do not agree on how much of a salary increase should be adopted in their new contract, they nevertheless do agree that the salaries paid to Western Springs' sergeants must be made more competitive compared to that of their colleagues in the externally comparable communities.

It rarely is possible, or reasonable, to completely close a salary gap within the effective term of a single collective bargaining agreement. Under the current fiscal circumstances facing Western Springs and other governmental entities, there is no sound, convincing argument in favor of making up most or all of the existing salary gap during the term of the parties' new contract. The Village and the Union both are aware of the

financial hurdles facing the Village, the State of Illinois, and the country as a whole. The current nation-wide economic downturn has resulted in a drop in revenues for the vast majority of governmental entities, including the Village, and it is evident that the Village cannot reliably count on an infusion of capital from either the state or the federal government to help the Village meet its financial obligations in the face of those falling revenues.

It is not possible to forecast, with any certainty, what will happen to the Village's economic condition, tax revenues, and other revenues over the next several years. The Village's current fiscal condition requires that it carefully manage its assets, but the Village does not appear to be in dire shape. Even if the country's economy in general strongly rebounds in the coming months and/or years, which is by no means certain, it may take longer for the State and the Village to see any real economic improvement.

These general economic considerations weigh in favor of the Village's proposal for a smaller salary increase for 2009 and 2010, followed by a re-opener for 2011. Such a structure would allow the parties more flexibility to react to future changes in the economy and revenue, for better or worse, which is important given the possibility of more economic volatility to come.

Other statutory factors also weigh in favor of a more modest increase in salaries in this particular case. The most recent data on the consumer price index reflects only a modest rise over the course of twelve months, with price indexes for some items falling. The interests of the public also suggest that the Village's proposal for a smaller salary increase, with a 2011 re-opener, is more appropriate than the Union's proposal. Again,

economic volatility will affect the Village's citizens in terms of their own employment, economic footing, and ability to pay taxes. A major wage increase that would require the Village to consign more of a currently shrinking base of tax and other revenues to salaries would harm the Village's ability to meet all of the needs of its citizens. Although the public's interests are served by the Village's ability to attract and retain high quality employees, which underlines the need for a competitive salary structure, current economic conditions require a more measured approach to ensuring that the salaries paid to the sergeants become and remain more competitive with that offered by the external comparables. As previously note, this cannot be accomplished all at once.

Both the Union and the Village have proposed a salary structure for their new contract that will make the sergeants' salaries more competitive relative to the salaries offered by the external comparables. Neither proposal, in addition, would go overboard by creating some sort of off-the-scale, economic windfall for the sergeants. Of the two salary proposals, however, the Village's proposal is more appropriate in light of the relevant statutory factors. The Village's proposal does serve to raise sergeants' salaries to a more competitive level with regard to the external comparables, albeit not to the level that would result from the Union's proposal, while accounting for the restraint that must be a constant concern for the Village as it manages its budget in these difficult times.

One other statutory factor, an internal comparison with the contractual wage structure that applies to the Department's patrol officers, also is of help in resolving this particular dispute. What is of importance with regard to this statutory factor is that reason and logic indicate that the salaries of the Department's sergeants should be higher

than the wages paid to the lower-ranking patrol officers. The data in the record demonstrate that the wage structure applying to the Village's patrol officers is competitive with what is offered to patrol officers in the external comparable communities. This suggests that it is entirely reasonable to measure the parties' competing salary proposals for the sergeants against the salary structure for the Department's patrol officers.

The evidentiary record shows that the entry and top salary levels for the Village's patrol officers steadily has been increasing over the past several years, while that has not necessarily been the case for the sergeants' salaries. The sergeants' starting salary from 2004 through 2009 remained essentially unchanged. During those same years, the starting salary for patrol officers regularly has increased, with the result that in 2009, starting patrol officers were offered a salary at an hourly rate within forty cents of that offered to starting sergeants. The top level salaries for sergeants has increased during this same time period, so there is more separation between the top salaries paid to sergeants and the top salaries paid to patrol officers. Both parties appear to recognize the reasonableness of maintaining this separation throughout the salary steps applicable to these two employee groups. It also is important to note that this analysis is based on wage data that does not include the percentage increase for 2009 proposed by the Union or the equity adjustment for 2009 proposed by the Village.

Comparing the parties' salary proposals with the salary structure in place for the Village's patrol officers offers further support for the adoption of the Village's proposal over that of the Union. The Village's salary proposal accomplishes the goal of placing

and maintaining the salary structure for the Village's sergeants at a higher level than the salary structure that applies to the Village's patrol officers. The Village's salary proposal also does this while maintaining budgetary restraint, which is critical in light of the country's current economic difficulties.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of salary is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

7. Article XI, Section 2 – Step Increments

The Union's final offer on the impasse issue of step increments is as follows:

Advancement between steps shall be at twelve month intervals.

The Village's final offer on the impasse issue of step increments is as follows:

Beginning after April 1, 2010, advancement from the Probationary Step to Step A shall be upon successful completion of the probationary period and advancement from Step A to Step B and Step B to Step C shall be at twelve month intervals.

To be eligible for step advancement the employee must meet departmental standards during the evaluation period, provided that the employee shall not be arbitrarily denied a step advancement.

The impasse issue of step increments is, of course, very closely tied to the preceding salary issue. The basic salary structure incorporated into the parties' new contract represents the foundation of the resolution of the parties' dispute over compensation, and appropriate language governing how sergeants move through the steps of the salary structure will establish important details that will have a profound impact on

the overall compensation available to the sergeants.

Many of the same statutory factors, considerations, and analysis that informed the preceding discussion of the parties' salary proposals apply with equal force to this particular area of dispute. The fact that the salaries paid to Western Springs' sergeants has been in the lower part of the range established among the external comparables suggests that it is important to improve the competitiveness of Western Springs' salary structure. This general approach which will assist the Village in meeting the public's safety interests by attracting and retaining high quality personnel. As was emphasized in the preceding discussion on basic salary, the language on this issue that ultimately is included in the parties' new agreement must reflect the most recent available consumer price data and account for the prevailing economic difficulties, which may continue to negatively impact the Village's revenues over at least the next few years. The contractual provision on step increments also will affect how the sergeants' salaries compare with the salaries paid to the Village's patrol officers.

The parties' proposals on the issue of step increments could not be more divergent. Essentially, the Union is advocating for automatic annual step advancement, while the Village calls for annual step advancement to be merit-based, with the sergeants being eligible for step advancement only if they meet departmental standards.

A review of the available data from the external comparables on this issue shows that there is little or no consensus as to how many steps are included in an overall salary structure or how many years it takes to move through those steps. However important these aspects are, they are not at the heart of this issue. The critical questions in resolving

this particular issue are overall compensation and the basis for advancement from one salary step to the next. Both of the parties' step-increment proposals work to improve the competitiveness of the overall compensation offered to the Village's sergeants, bringing that compensation more in line with what is offered by the external comparables.

The data from the external comparables as to the basis for advancement from one step to the next is particularly useful here. Of those external comparables that have reported a basis for step movement, all report a merit-based approach. This evidence strongly supports adoption of the Village's proposal, with its own merit-based step advancement. The Union's proposal of automatic step increases appears to be an additional effort to address the disparity between Western Springs' overall salary structure and the salary structures among the external comparables, but the fact that such a gap exists does not justify a complete departure from the established norm of merit-based step advancements.

Of the other statutory factors, the interest of the public is relevant, but not necessarily determinative. As stated before, the public has an interest in the Department's ability to attract and retain the highest quality personnel possible, which certainly argues in favor of more liberal wage and step advancement proposals. The public also has an interest, however, in the Department's ability to ensure that its members continue to meet the reasonable performance standards that the Department has set, which argues in favor of a merit-based approach to step advancement. With regard to the internal comparison with the patrol officers' agreement, it appears that this other contract does not expressly address the issue of step advancement, so no direct

comparison is possible. As previously noted, though, the internal comparison with the patrol officers' contract does relate to this particular issue in the context of the overall compensation levels of the two groups of Department employees.

One more consideration is of note here. The issue of salary and the issue of step increments are so intertwined that it almost is impossible to adopt one party's proposal on one of these issues and then go with the other party's proposal on the second. Given the restriction that this Arbitrator choose between the two parties' proposals on these economic issues, without fashioning any sort of compromise language, the only way to forge a coherent and workable salary structure for the parties is to adopt only one side's proposals on these two issues. It is not possible to split the difference by adopting the Union's proposal on one of these two issues and the Village's proposal on the other. Given that the Village's salary proposal has been adopted for the reasons set forth in the preceding section, this factor in the analysis strongly argues in favor of the adoption of the Village's proposal on step increments.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of step increments is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

8. Article XI, Section 4 – Specialty Stipends

The Union's final offer on the impasse issue of specialty stipends is as follows:

An employee who is assigned from time to time at the discretion of the Director of Law Enforcement Services as an administrative or investigative sergeant shall receive a stipend of \$1,800 per contract year (pro rata if assigned for

less than a year).

The Village has not offered any proposed language on the impasse issue of specialty stipends.

The Union's proposal to add a provision for specialty stipends to the parties' new contract must be seen as part of its overall effort to increase the sergeants' total compensation, making that compensation more competitive relative to the total compensation offered by the external comparables. The notion of a stipend for a recognized specialty assignment is not a new one among police departments. Such stipends typically are associated with, for example, detective assignments. In fact, the collective bargaining agreement covering the Department's patrol officers does provide for specialty stipends for patrol officers who serve as a school resource officer, high school liaison officer, or detective. Because the concept of a specialty stipend is not new and unprecedented, the Union's proposal is not really a "breakthrough" proposal, even if it does seek to apply a specialty stipend to a position that previously has not been associated with a stipend.

The Village has acknowledged that an administrative sergeant's position is a specialty assignment for which sergeants must apply. At present, one of the five sergeants fills the position of administrative sergeant, while the remaining four are patrol sergeants. The Village has suggested that it plans to eliminate the administrative sergeant position in September 2010. This planned elimination does not particularly affect the proper resolution of this issue. Such plans can, and do, change with the circumstances, and it is possible that this particular position could be brought back even if it is

eliminated as the Village currently intends.

A review of the information from the external comparables reveals that only one of these communities makes any sort of specialty stipend available to its sergeants – Palos Hills pays \$1,000.00 to a sergeant who is assigned to the specialty position of detective. There is no evidence that any of the other external comparables pay specialty stipends to their sergeants, and none of these communities, including Palos Hills, pays a specialty stipend for an assignment as administrative sergeant.

The Union has emphasized internal comparability on this issue, pointing to the aforementioned specialty stipends in the patrol officers' agreement. The Union casts this matter as one of fairness, suggesting that because the administrative sergeant is superior to a detective who receives a stipend, the administrative sergeant also should receive a stipend. The problem with this Union argument is that the record does not prove that the administrative sergeant position necessarily involves extra duties and responsibilities that would justify the payment of a stipend. A detective assignment, compared with a regular patrol officer assignment, certainly does.

I find that the evidentiary record simply does not support the inclusion of a specialty stipend provision within the parties' new contract. There is little evidence in the record regarding the specific additional duties and responsibilities associated with the position of administrative sergeant to justify the adoption of specialty stipends for this position. Moreover, the fact that the Village is planning to eliminate the administrative sergeant positions suggests that any such additional duties and responsibilities are relatively minor and may easily be accomplished by Department personnel without any

need for a special assignment position. The fact that none of the external comparables identify the administrative/investigative sergeant position as calling for a specialty stipend supports a finding that a specialty stipend for this position is not justified.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of specialty stipends is more appropriate. Accordingly, there shall be no provision on this issue included within the parties' new collective bargaining agreement.

9. Article XI, Section 5 – Longevity

The Union's final offer on the impasse issue of longevity is as follows:

The Employer shall pay longevity for length of service annually in accordance with the following schedule:

YEARS OF SERVICE	ADDITIONAL PAY
15	\$1,000.00
20	\$1,250.00
25	\$1,500.00

The Village has not offered any proposed language on the impasse issue of longevity.

Analysis of the parties' opposing positions on this issue rests on many of the same considerations and determinations that applied to the preceding discussions of the salary and step increments issues. The Union's proposed addition of longevity pay is part of its overall salary proposal, and this proposal would serve as an additional means of increasing total compensation, precisely targeted at those sergeants with long years of service.

For the reasons set forth in the section discussing the issue of salary, I find that

there is insufficient support from the statutory factors for adoption of this proposal that is designed to increase the overall salary available to the sergeants. The salary comparison with the external communities reveals that although the sergeants' salaries should be increased in order to make them more competitive with what is offered in these other communities, it is not reasonable to add on another increase, in the form of longevity-based pay, on top of the base salary increase that is to be incorporated in the parties' new agreement. Moreover, none of the external comparables offer any longevity-based pay to their own police sergeants. Similarly, the internal comparison with the patrol officers' contract offers no support for longevity pay; there is no such provision in the patrol officers' contract. In fact, the record suggests that no Village employees receive any form of longevity-based pay. The relatively flat consumer price index data in the record show that current prospects for inflation do not justify the adoption of new element of compensation.

It may be argued that longevity-based pay might help the Village retain its more senior and experienced employees, which would serve the interests of the public, but the salary structure already in place offers higher compensation levels for sergeants who remain in the Village's employ over the long term. One other element that must be considered here is the fact that an automatic longevity payment may serve to partially blunt the effectiveness of the merit-based step advancement system that will be incorporated into the parties' new agreement.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of longevity is more appropriate. Accordingly, there shall

be no provision on this issue included within the parties' new collective bargaining agreement.

10. Article XII, Section 1 – Insurance

The Union's final offer on the impasse issue of insurance is as follows:

The hospitalization and medical insurance program (including a PPO and HMO alternative) in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village retains the right to change insurance carriers, PPO's, HMO's, or to self-insure (as a stand alone entity or with a group of municipalities) as it deems appropriate, so long as the new basic coverage and new basic benefits are relatively similar to those which predated this Agreement.

However, in recognition of the desirability of maintaining uniform coverages, benefits and costs, Village wide and notwithstanding the foregoing provisions regarding relatively similar basic coverages and benefits, the parties agree that if the Village makes any modification with respect to health insurance coverage, benefits or costs that are applicable to other full time non-bargaining Village employees generally, then such modifications in coverage, benefits and costs shall likewise be applicable to the employees covered by this Agreement, on the same terms and on the same date that they are applicable to other regular full-time non-bargaining unit Village employees generally (e.g., if full-time regular non-bargaining unit employees are required to pay a co-pay for doctor's visits, then bargaining unit employees shall automatically be required to pay the same amount at the same time). Notwithstanding the above, bargaining unit employees shall pay no more than the following monthly premiums for insurance coverage.

Employees may select single or family coverage during the enrollment period established by the Village. The employee shall pay the following amounts in monthly premiums or cost for single or family coverage, whichever is applicable, for participation in either the Village's Group Hospitalization and Major Medical Program, PPO or an HMO and said amount shall be deducted from the employee's paycheck:

Effective	Gross Monthly Premium
<u>April 1, 1999</u>	<u>Employee Contribution</u>
Single	10%
Family	20%

The Village's final offer on the impasse issue of insurance is as follows:

The hospitalization and medical insurance program (including a PPO and HMO alternative) in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village retains the right to change insurance carriers, PPO's, HMO's, or to self-insure (as a stand alone entity or with a group of municipalities) as it deems appropriate, so long as the new basic coverage and new basic benefits are relatively similar to those which predated this Agreement.

However, in recognition of the desirability of maintaining uniform coverages, benefits and costs, Village wide and notwithstanding the foregoing provisions regarding relatively similar basic coverages and benefits, the parties agree that if the Village makes any modification with respect to health insurance coverage, benefits or costs that are applicable to other full time non-bargaining unit Village employees generally, then such modifications in coverage, benefits and costs shall likewise be applicable to the employees covered by this Agreement, on the same terms and on the same date that they are applicable to other regular full-time non-bargaining unit Village employees generally (e.g., if full-time regular non-bargaining unit employees are required to pay a co-pay for doctor's visits, then bargaining unit employees shall automatically be required to pay the same amount at the same time). Notwithstanding the above, bargaining unit employees shall pay no more than the following monthly premiums for insurance. Provided, however, if the Village health insurance premium rates increase by more than 15% for 2011, the Village may elect to reopen negotiations over the issue of employee premium contributions to be effective April 1, 2011. If the parties are unable to reach an agreement, the dispute shall be resolved in accordance with the alternative impasse procedure set forth in Appendix A except that the notice dates shall not be applicable.

Employees may select single or family coverage during the enrollment period established by the Village. The employee shall pay the following amounts in monthly premiums or cost for single or family coverage, whichever is applicable, for participation in either the Village's Group Hospitalization and Major Medical Program, PPO or an HMO and said amount shall be deducted from the employee's paycheck:

Effective	Gross Monthly Premium
<u>April 1, 1999</u>	<u>Employee Contribution</u>
Single	10%

With the exception of the foundational issue of wages, there probably is not any other single collective bargaining issue that has more of an impact on all concerned than the issue of health insurance. As health insurance premiums and health care costs have skyrocketed over the past many years, employers and employees have placed increasing emphasis on and have struggled with the need to balance maintaining a proper degree of insurance coverage against the need to control costs.

These struggles and concerns certainly are evident in the instant matter. Each of the parties has submitted a lengthy proposal on the issue of health insurance, and the entirety of the Union's proposal is incorporated within the Village's proposal. What the Village adds to the Union's language, however, is something to which the Union has been unable to agree. The additional language proposed by the Village focuses directly on the problem of significant increases in premium rates, and it would allow the Village to call for a reopening of negotiations on the issue of employee contributions toward premiums if the Village's premiums increase by more than 15% for 2011.

The Union's refusal to agree to this proposed re-opener is centered on its stated priority of securing a cap on its members' out-of-pocket costs for insurance and health care. With regard to employee contributions toward health insurance premiums, the Union is looking to achieve a measure of stability for its members over the duration of the parties' new agreement by setting the rate of their contribution toward premiums for the remaining life of the contract. The Village's insistence on the inclusion of a re-opener that would be triggered only by a significant increase in premiums reflects the

Village's own reasonable desire for some degree of stability in its costs, based on the possibility that the employees ultimately would share in the burden if premiums do rise at a precipitous rate for 2011. Reliably stable insurance costs certainly would be a desirable outcome for both parties on this point, but that is unlikely because of the inevitable and sharp upward rise in premiums that is virtually sure to come.

As to this particular issue, the most relevant of the statutory factors is the internal comparison with what is offered to other Village employees, particularly the insurance provision that appears in collective bargaining agreement covering the Department's patrol officers. The Union's health insurance proposal here is identical to what appears in the patrol officers' contract. There would be benefits to all concerned if the terms of the sergeants' health insurance coverage were the same as that applying to the Department's patrol officers. In terms of administrative and operational efficiency, there can be no serious question that administering the same type of plan, with the same terms, coverages, rules, exclusions, etc., would be far more efficient than handling a possible re-opener that could result in the sergeants having a very different plan than what applies to the patrol officers. Moreover, there may be some cost-savings derived from whatever economies of scale are associated with having the same terms apply to both the sergeants and the patrol officers.

The Village itself has acknowledged that desirability of maintaining uniform coverages, benefits, and costs for its employees. Given that the patrol officers' contract does not provide for any sort of re-opener, it is difficult to understand how including such a re-opener in the sergeants' contract promotes any such uniformity. Even if the Village

were to seek a change in the level of employee contributions as to its non-represented employees for 2011, or any other changes to the terms of the health insurance coverage that it offers those employees, these changes would not apply to the patrol officers, thereby destroying the uniformity of coverages, benefits, and costs. I find that the Union's proposal is far more effective in maintaining this desirable uniformity among the Department's employees, specifically, and the Village's employees as a whole.

Another important aspect of this internal comparison is the importance of insuring that the sergeants have access to employment benefits that are at least on a par with what is provided to the patrol officers who are below them in rank within the Department. The re-opener suggested by the Village easily could result in the sergeants having greater out-of-pocket costs or lesser coverage than what applies to the patrol officers. Higher-ranking Department employees should not be placed in the position of having a less favorable package of salary and benefits available to them than what is provided to lower-ranking employees.

Another important consideration here is that employee contributions toward the cost of health insurance premiums are set as a percentage of the total cost of those premiums, rather than as a specific dollar amount. This means that as a premium increases, the dollar value of an employee's contribution also will increase proportionally. In this way, the arithmetic basis of the employees' and the Village's contributions toward the cost of insurance premiums remains quite stable. Whatever happens to the amount of the premium, the percentage of the insurance premium paid by the Village remains constant, as does the percentage paid by the employees themselves.

Under the Union's proposal, the Village and its employees therefore will continue to share the cost of health insurance premiums in a predictable and fixed manner, without the uncertainty and turmoil associated with a re-opener.

The effect of a re-opener on the issue of health insurance is very different from the impact discussed in connection with salaries. The Village's proposed re-opener on salaries was adopted, in part, because it allowed for the possibility of an adjustment to salaries in response to the potential for future economic volatility, where pre-set annual percentage wage increases would not necessarily account for such volatility. In connection with health insurance premiums, the established percentage-based employee contribution system already does offer a solid and reasonable means for the Village and its employees to continue to share premium costs, even in the face of potential future pricing volatility. A re-opener would jeopardize that balanced status quo.

As for the other statutory factors, none of these offer much in the way of valuable assistance in the resolution of this impasse issue. The information on insurance coverage and contributions from the external comparables does not reveal any sort of consensus on how such matters are handled in these communities. The consumer price index does not directly affect health insurance premiums, so inflation data play no role here. The current state of the economy certainly does have an impact on the fiscal challenges that both the Village and its employees face as they grapple with the cost of health insurance and healthcare, but I find that the system of employee contributions that appears in the Union's proposal, and in the patrol officers' contract, addresses these concerns in as reasonable, equitable, and sustainable a way as possible.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of insurance is more appropriate. Accordingly, the Union's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

11. Article XII, Section 7 – Dental Insurance

The Union's final offer on the impasse issue of dental insurance is as follows:

Upon the implementation of this Agreement, bargaining unit employees shall be covered by the same dental insurance plan applicable to full-time non-bargaining unit employees generally, as the plan and benefits may, from time to time be amended, provided the bargaining unit employees shall pay the following premium applicable to the coverage selected, as it may from time to time be amended.

<u>Effective</u>	<u>Gross Monthly Premium</u>
<u>April 1, 2010</u>	<u>Employee Contribution</u>
Single	0%
Family	50%

The Village's final offer on the impasse issue of dental insurance is as follows:

Bargaining unit employees shall be covered by the same dental insurance applicable to full-time non-bargaining unit employees generally, as the plan and benefits may, from time to time be amended. Effective April 1, 2010, the bargaining unit employees shall pay the entire premium applicable to the coverage selected, as it may from time to time be amended.

As is true in connection with the preceding discussion of health insurance coverage, the most important statutory factor relating to the impasse issue of dental insurance is an internal comparison with what is offered to other Village employees, particularly what appears in the collective bargaining agreement that covers the Department's patrol officers.

The Village's proposal on dental insurance closely tracks what appears in the patrol officers' contract. Indeed, the only differences between what the Village proposes here and what has been included in the patrol officers' contract relates to effective dates. The Village's proposal on this issue provides that the sergeants shall receive the same coverage as the patrol officers and its non-represented employees, and that the sergeants shall pay the full cost of dental insurance. The Village's patrol officers and non-represented employees also pay the full cost of their dental insurance.

The Union's proposal on dental insurance would be far more advantageous to the sergeants in that the Village would pay the entire premium for single employees and half of the premium for family coverage. There is nothing in the record, however, that would justify such a departure from the dental insurance provisions that apparently apply to all of the Village's other employees. The overall compensation available to the sergeants under their new collective bargaining agreement, when compared to what is available to the Village's patrol officers, does not support the adoption of a dental insurance provision that is so much more favorable to them than what applies to the patrol officers and the other Village employees.

As was true in connection with health insurance coverage, the other statutory factors are not particularly relevant to the resolution of the issue of dental insurance. The information from the external comparables reveals that where dental insurance is offered, employees do contribute toward the cost of that coverage. The level of employee contribution varies across the external comparables, although the sergeants working for several of the externally comparable communities pay the entire cost of their dental

insurance coverage.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of dental insurance is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

B. NON-ECONOMIC IMPASSE ISSUES

1. Article V, Section 1 – Definition of "Grievance"

The Union's final offer on the impasse issue of the definition of "grievance" for purposes of the grievance procedure is as follows:

A "grievance" is defined as a dispute or difference of opinion raised by an employee against the Village involving an alleged violation of an express provision of this Agreement. The Parties agree that any termination regarding a covered employee shall advance directly to Arbitration.

The Village's final offer on the impasse issue of the definition of "grievance" for purposes of the grievance procedure is as follows:

A "grievance" is defined as a dispute or difference of opinion raised by an employee against the Village involving an alleged violation of an express provision of this Agreement except that any dispute or difference of opinion concerning a matter or issue subject to the jurisdiction of the Western Springs Board of Fire and Police Commissioners shall not be considered a grievance under this Agreement.

The impasse issue of how to define the term "grievance" for purposes of the contractual grievance process must be resolved in coordination with three other impasse issues: election of grievance arbitration for discipline; discipline; and the Board of Fire and Police Commissioners. All of these impasse issues must be resolved in a way that consistently adopts or rejects the notion of allowing the sergeants the choice of taking

disciplinary disputes either to grievance arbitration or to the Board of Fire and Police Commissioners.

The Union's proposal on this issue would include disputes over disciplinary action as being subject to the grievance arbitration process, with discharge cases advancing directly to arbitration. The Village's proposal serves to remove disciplinary matters from the contractual grievance arbitration process by continuing the Board of Fire and Police Commissioners' sole jurisdiction over such matters.

One particularly important element in the analysis and resolution of this particular impasse issue is the fact that the Illinois statute governing the Village's Board of Fire and Police Commissioners, and its handling of removal and/or discharge cases, was amended in August 2007 to provide that bargaining over alternative forms of due process review of discipline, based upon impartial arbitration, is a mandatory subject of bargaining, unless the parties agree otherwise. In the instant proceeding, the parties did not agree that an alternative form of due process review should be deemed anything other than a mandatory subject of bargaining, so it is proper for this Arbitrator to analyze and resolve this impasse issue.

The timing of the amendment to the BFPCA has a significant impact on the analysis of this issue. This amendment reflects legislative recognition of the important role of grievance arbitration in ensuring a thorough and unbiased review of disciplinary action. With the exception of the collective bargaining agreement covering Riverside's patrol officers, it appears that all of the collective bargaining agreements from the externally comparable communities that were submitted into the record were negotiated

and implemented before the BFPCA was amended. The Riverside contract, in fact, acknowledges the amendment in a side letter of agreement incorporated into the contract as an appendix. This side letter states that the two parties to the Riverside contract had reached an agreement that did not include the processing of all discipline cases through the grievance procedure, but further providing that in any future interest arbitration on review of discipline through the grievance procedure, the union would not have to bear a burden of proof greater than it would have born in the negotiations giving rise to that current Riverside contract. Essentially, the side letter precludes application of the higher burden of proof associated with "breakthrough" proposals.

The side letter incorporated as an appendix to the Riverside contract does not explain why the parties chose not to include grievance arbitration as an option for all disciplinary disputes. It may be that the parties to the Riverside contract were wary of addressing the possibility of expanding the grievance arbitration review process so soon after the BFPCA was amended, preferring to wait and see what happened in other jurisdictions. Whatever the reason for their decision to limit the applicability of grievance arbitration to disciplinary matters, it nevertheless is true that the Riverside contract does allow for grievance arbitration as a review option for discipline up to a five-day suspension

A review of the discipline review provisions in the contracts from the external communities reveals that although all but one were negotiated and implemented prior to the most recent amendment to the BFPCA, all of those contracts nevertheless provide employees with the option of choosing grievance arbitration of some disciplinary matters.

In fact, the only externally comparable communities that strictly adhere to review of discipline solely before a Board of Fire and Police Commissioners are those communities where sergeants are not represented by a union.

The contract covering the Village's patrol officers does not allow those officers the option of choosing grievance arbitration as the method of review for any disciplinary action. The current patrol officers' contract, like all but one of the contracts from the external communities, was negotiated and implemented before the August 2007 amendment to BFPCA. As the Village notes, the patrol officers' contract has been negotiated and amended since an earlier amendment to the BFPCA, which established grievance arbitration as an alternate or supplemental form of review for discipline up to five days' suspension as a mandatory subject of bargaining, but the Village's patrol officers never have had the option of choosing grievance arbitration as an alternative form of review for such lesser discipline. The impact of this is significantly blunted by the fact that the Village appears to be an anomaly among the external communities with union-represented police officers by adhering to disciplinary review only before a Board of Police and Fire Commissioners.

All of this evidence suggests that the trend is toward more extensive application of grievance arbitration as an alternative method of reviewing disciplinary action. Such a trend makes sense in light of the statutory factors. The interests of both parties are better served by a disciplinary review process that is as fair and unbiased as possible. Boards of Fire and Police Commissioners perform commendable work in their review of disciplinary matters, but there can be little serious question that review of a disciplinary

matter by a neutral third party, compared to such a Board's review, likely will involve fewer biases, less impact from personal relationships and interactions, and a more dispassionate application of the applicable standard of review to the facts. However fair and unbiased the Board may actually be, it is inevitable that questions of fairness and a perceived lack of due process will arise in connection with any form of review limited to essentially the same entity that issued the discipline in the first place.

The difference in the applicable standard also is important. Grievance arbitration involves the "just cause" standard of review for disciplinary matters, while the "cause" standard applies to disciplinary cases before the Board of Fire and Police Commissioners. Particularly in those disciplinary cases that involve severe measures of discipline, including the ultimate penalty of discharge, an employee's due process rights certainly are better served by the higher "just cause" standard. Indeed, the interests of the Village community strongly argue in favor of the higher standard associated with grievance arbitration; the public has a right to expect that its valuable and experienced public safety officers will be subject to discipline and discharge only upon review of the facts and circumstances against the highest standards of proof and review.

Adoption of the Union's proposal on this issue does, in fact, constitute a significant change in the method of disciplinary review available to Village employees. As previously noted, this change does not necessarily constitute a "breakthrough" because the existing status quo was in place solely as the unilateral choice of the Village. The parties never have had the opportunity to bargain over the review of disciplinary action before their negotiations over their new agreement, so the notion of deeming any

proposal for a change in existing circumstances as a "breakthrough" is not completely reasonable. Instead, the Union's proposal is far more in keeping with the apparent trend toward the increasing application of grievance arbitration as an alternative means of reviewing disciplinary action.

This Arbitrator does find that there is one aspect of the Union's proposal that raises some concerns and probably should be modified. Because the issue of the definition of "grievance" is a non-economic issue, this Arbitrator has the authority to modify the parties' proposals or even develop a compromise proposal of his own to resolve this issue. It is not necessary for this Arbitrator to draft an entirely new compromise proposal, because the addition of relatively minor language to the Union's proposal will effectively address the aforementioned concerns.

The final sentence of the Union's proposal provides that "any termination regarding a covered employee shall advance directly to Arbitration." This language, on its face, does not sufficiently convey the fact that arbitration is an option for any disciplinary matter, including those involving discharge. Instead, the final sentence of the Union's proposal might be read as suggesting that arbitration of a discharge case is mandatory. To properly reflect the fact that the employee has the choice of taking a disciplinary matter to grievance arbitration or to the Board of Fire and Police Commissioners, the final sentence of the Union's proposal must and shall be modified as follows:

In the event that a covered employee elects to dispute his or her discharge by pursuing a grievance under the grievance and arbitration procedure of this Agreement, then that grievance shall advance directly to Arbitration.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of the definition of "grievance," as modified by this Arbitrator, is more appropriate. Accordingly, the Union's proposal on this issue, as modified by this Arbitrator, shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

2. Article V, Section 6 – Election of Grievance Arbitration for Discipline

The Union's final offer on the impasse issue of election of grievance arbitration for discipline is as follows:

Prior to imposing discipline, the Chief of Police or the Chief's designee will set a meeting with the employee to advise the employee of the proposed discipline and the factual basis therefore, in writing. At the employee's request, the employee shall be entitled to Union representation at that meeting. After the conclusion of said meeting, the Chief or the Chief's designee will issue a Decision to Discipline, in writing, as to the proposed discipline ("Decision to Discipline"), to the affected employee and the Union. At the employee's option, disciplinary action against the employee may be contested either through the arbitration procedure of this Agreement or through the Board of Fire and Police Commissioners ("BOFPC"), but not both. In order to exercise the arbitration option, an officer must execute an Election, Waiver and Release form ("Election Form" attached as Appendix D). This Election Form and disciplinary process is not a waiver of any statutory or common law right or remedy other than as provided herein. The Election Form shall be given to the officer by the employer, at the time the officer is formally notified of the Decision to Discipline.

The employee shall have three (3) calendar days to submit a copy of the Election Form and Decision to the Union for approval to arbitrate the discipline. The Union shall have an additional seven (7) calendar days to approve or deny the request for arbitration. If the Union authorizes an arbitration concerning the discipline, it shall notify the Chief or the Chief's designee in writing of the intent to arbitrate within ten (10) calendar days of the issuance of the Decision to Discipline. If approved by the Union for arbitration, the Election Form shall constitute a grievance which shall be deemed filed at the arbitration step of the grievance procedure. When a grievance is elected, the arbitrator will determine whether the discipline was imposed with just cause, and whether the discipline

was excessive. If the arbitration is not approved by the Union within ten (10) calendar days of the Decision to Discipline, or is not elected by the employee, the employee retains his rights to appeal discipline before the Village of Western Springs Fire & Police Commission in accordance with the Illinois Municipal Code, Division 2.1, Board of Fire and Police Commissioners, 65 ILCS 5/10-2.1 *et seq.*, as amended.

The Village's final offer on the impasse issue of election of grievance arbitration for discipline is not to include such a provision within the parties' collective bargaining agreement.

The preceding discussion and resolution of the impasse issue of the definition of "grievance" requires adoption of the Union's proposal on the impasse issue of election of grievance arbitration for disciplinary actions. Obviously, because the contractual definition of "grievance" includes disputes over disciplinary matters, and because grievance arbitration is available as an alternate means of reviewing disciplinary action, then it absolutely is necessary to include a contractual provision that provides specific guidance as to how employees are to make the choice between grievance arbitration and the Board of Fire and Police Commissioners.

I find that the Union's proposal on this issue sets forth a workable and reasonable means of implementing the employee election of either grievance arbitration or proceeding before the Board of Fire and Police Commissioners in the event of a dispute over discipline. This proposal strikes a reasonable and workable balance between the due process rights of the employee and the efficient and just administration of discipline required by all involved.

The Village's objections to the Union's proposal has suggested that, among other

problems, it represents a paradigm shift by requiring several unprecedented benefits (presumably to the employees), and that it will affect the time frame for imposing discipline and requesting a hearing before the Board of Fire and Police Commissioners. It is true that the Union's proposal does involve certain procedural steps, safeguards, and rights that previously have not been available to the Village's sergeants. The fact that these procedural steps, safeguards, and rights have not been available to the sergeants before this stems solely from the fact that they previously have not been able to pursue a dispute over disciplinary action through a grievance arbitration process. Such steps, safeguards, and rights are not unprecedented in those jurisdictions where a grievance arbitrator is available as a means of disputing discipline. In essence, the steps, safeguards, and rights that the Village cites "go with the territory" of the typical grievance arbitration process. By making grievance arbitration available as an option for an employee who wishes to challenge disciplinary action, it is necessary to implement changes in how the Village handles discipline as a whole. Such change rarely is easy, but the fact that changes will be necessary is not a good enough argument to deprive employees of the opportunity to protect their due process rights through having the choice between grievance arbitration and proceedings before the Board of Fire and Police Commissioners.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of the election of grievance arbitration for discipline is more appropriate. Accordingly, the Union's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the

Appendix attached hereto.

3. Article VIII, Section 10 – Distribution of Overtime

The Union's final offer on the impasse issue of distribution of overtime is as follows:

Distribution of overtime will be as follows:

- (a) If an oncoming shift is understaffed, Dispatch will call the most senior Officer (which includes all Sergeants) who is on the opposite day off. If no such Officer is available, in order of seniority, volunteers will be asked to stay over. If no officer volunteers, the least senior officer will be ordered to stay 6 hours to cover the shift. The least senior patrol officer from the next shift will then be ordered to cover the remainder of the shift.
- (b) Scheduled overtime more than 24 hours in advance, including any outside details, will be distributed on a rotating seniority basis.

Should a Sergeant demonstrate that he has been wrongly denied an overtime opportunity, his sole remedy will be the opportunity to work the next available overtime in accordance with the procedure in effect.

The Village's final offer on the impasse issue of distribution of overtime is as follows:

Distribution of overtime will be as follows:

- (a) If an oncoming shift is understaffed, Dispatch will call the most Senior Officer (including all Sergeants) who is on the opposite day off. If no such Officer (including Sergeants) is available, in order of seniority, volunteers will be asked to stay over. If no Officer (including Sergeants) volunteers, the least senior officer will be ordered to stay to cover the first half of the shift. The least senior officer from the next shift will then be ordered to cover the remainder of the shift.
- (b) Scheduled overtime more than 24 hours in advance, including any outside details, will be distributed on a rotating seniority basis.

Should a Sergeant demonstrate that he has been wrongly denied an overtime opportunity, his sole remedy will be the opportunity to work the next

available overtime in accordance with the procedure in effect.

Overtime is a crucial component of the overall compensation available to the sergeants who will be covered by the parties' new collective bargaining agreement. Both of the proposals on this issue address overtime that comes about in two ways: overtime that is scheduled in advance and overtime that occurs with less warning because of unplanned understaffing on a shift. The parties agree on how to handle overtime that is scheduled more than twenty-four hours in advance. Such overtime is to be distributed on a rotating seniority basis.

The parties' dispute here centers on the handling of unscheduled overtime that occurs when a shift is understaffed, presumably with less than twenty-four hours notice. An unplanned understaffing on a shift might occur as a result of an officer's sudden illness, a family emergency, or some other reason for an officer to call off from a scheduled shift. In this type of situation, an officer might be held over or called in early to work overtime with very little warning, which easily could create personal or family difficulties for that officer. Compared to overtime that is scheduled in advance, such unplanned overtime may present problems for the officer who works it.

In their proposals, both parties agree that overtime that is not scheduled at least twenty-four hours in advance should be offered in seniority order to the officers, including the sergeants, who are off work that day; the parties further agree that if no off-duty officer volunteers, then the Department will seek volunteers to stay over and work the overtime. In addition, the parties agree that through this point in the process, officers have the right to determine whether they will accept such offered overtime. To that

extent, overtime that is not scheduled at least twenty-four hours in advance is voluntary.

The sticking point on this issue is how to handle those situations when none of the officers, including the sergeants, volunteers to work such unscheduled overtime. The Union's proposal provides that if there are no volunteers, then the least senior on-duty officer, including the sergeants, will be ordered to stay over to cover the first six hours of the understaffed shift, and the least senior patrol officer from the shift following the understaffed shift will be ordered to report early to cover the remainder of the understaffed shift. The Village's proposal differs from the Union's in that it provides that the least senior on-duty officer, including the sergeants, will be ordered to stay over to cover the first half of the understaffed shift, and the least senior officer, which presumably would include the sergeants, from the shift following the understaffed shift will be ordered to report early to cover the second half of the understaffed shift.

This matter is complicated by the fact that the distribution of overtime affects the patrol officers and the sergeants together. Given that reality, there must be an appropriate degree of coordination between the overtime provision that ultimately appears in the sergeants' new collective bargaining agreement and the overtime provision that appears in the patrol officers' agreement.

The Union's proposal has the advantage of being substantively identical to the provision that appears in the patrol officers' agreement. In resolving this dispute, however, it also is necessary to coordinate the handling of overtime with certain other provisions of the sergeants' new contract, particularly the provision governing the length of the normal workday.

The evidence in the record relating to the parties' bargaining history is somewhat contradictory. Not surprisingly, the parties do not agree on whether they had reached a tentative agreement over the Union's proposal on this overtime issue. The crucial information to be taken from a review of the evidence on the parties' bargaining over this issue is that it appears that both sides are seeking a system for distributing the type of involuntary, unscheduled overtime that remains in question by evenly splitting the required coverage of an understaffed shift between two different officers. This basic approach is entirely reasonable and logical in that it helps to promote as even a distribution of overtime among the officers, including the sergeants, as is possible. The critical element that must be resolved is how best to implement a system that will achieve the most even distribution of involuntary overtime that is not scheduled at least twenty-four hours in advance.

The Union's proposal that an officer ordered to stay over shall cover the first six hours of an understaffed shift appears to be based upon a schedule involving twelve-hour shifts. Under the Union's approach the officer staying over and the officer reporting early each would work six overtime hours. If it is assumed that all scheduled shifts last for twelve hours, then the Union's proposal would result in as even a distribution of such overtime as possible.

Although it may be very likely that sergeants will continue to work twelve-hour shifts during the effective term of the parties' new collective bargaining agreement, the fact is that the Village's proposal on the length of the normal workday, which shall be included in that new contract, allows for a normal workday shift of between eight and

twelve hours. The Village's proposal on the distribution of overtime accounts for the possibility of a normal workday shift of less than twelve hours' duration. By specifying that an officer ordered to stay over shall cover the first half of an understaffed shift, and that the officer ordered to report early shall cover the second half of the understaffed shift, the Village's proposal properly anticipates and accounts for the possibility that a normal shift might be something other than twelve hours in length.

By refraining from specifying how many hours an officer ordered to cover part of an understaffed shift shall spend doing so, the Village's proposal on the distribution of overtime obviously is more consistent with the provision governing the length of the normal workday that will be included in the parties' new collective bargaining agreement. Moreover, the Village's proposal will ensure an even distribution of overtime whether a sergeant's normal workday lasts for twelve hours or for something other than twelve hours. Although the Village's proposal differs from what appears in the patrol officers' contract, which provides that an officer ordered to stay over to cover an understaffed shift shall work the first six hours of that understaffed shift, it nevertheless is possible to coordinate the Village's proposal with the corresponding provision in the patrol officers' contract so as to minimize or even eliminate any procedural or operational difficulties that might arise from this difference in terms.

For the reasons discussed above, this Arbitrator finds that the Village's proposal on the issue of distribution of overtime is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

4. Article VIII, Section 12 – Shift Preference

The Union's final offer on the impasse issue of shift preference is included as part of its final offer on the impasse issue of normal workday, rather than presented as a separate proposal. The Union's final offer on the impasse issue of shift preference is as follows:

Work shifts shall be selected by seniority on an annual basis and shall be either 600 – 1800 hours or 1800 – 0600 hours.

The Village's final offer on the impasse issue of shift preference is as follows:

Annually, the Chief will request that sergeants submit a request to the Police Chief or his designee, on a form provided by the Police Department, to be assigned to a particular shift. The Police Chief shall make the final decision on the shift assignment and days off, based upon operational considerations and qualifications. Nothing contained herein shall preclude the Police Chief from later reassigning an employee or employees to another shift.

The analysis and ultimate resolution of this issue must be based on the necessity of consistency between related provisions of the parties' new collective bargaining agreement. To properly function, a collective bargaining agreement must be internally consistent.

A reading of the Union's proposal presupposes the continuation of twelve-hour shifts, and it does not account for the possibility of shifts of any other duration. The Union's proposal would present very real operational issues if it were adopted because the provision governing the normal workday that will be included in the parties' new contract allows for a normal workday of between eight and twelve hours' duration. The Union's proposal directly contradicts the language of the normal workday provision in that the Union's shift preference proposal requires twelve-hour shifts. The Village's

proposal does not refer to any particular length of shift, therefore making it administratively and operationally consistent with the normal workday provision that will appear in the parties' new agreement.

The only statutory factor that is relevant to and of use in connection with this issue is comparison with the externally comparable communities. A review of shift selection processes that exist among the external comparables shows that seniority-based shift selection is the minority approach. Most of the external comparables do not have any shift-bidding process, whether based on seniority or on something else. From this evidence, it is apparent that the Village's proposal on this issue is more in line with what exists in the external comparables than is the Union's proposal. Those external comparables that do not have any shift-bidding or shift-selection process in place apparently assign shifts to their sergeants. The Village's proposal allows for the sergeants to request specific shift assignments, but this proposal shares common ground with the shift-assignment systems in place in most of the external comparables in that it makes such assignments subject to the Chief's discretion. Moreover, the sergeants in all but two of the external comparables, LaGrange and LaGrange Park, work on a rotating shift basis, and the Village's proposal also comprehends such a rotation for its own sergeants. Comparison with the contract covering the Village's patrol officers is of no relevance in this particular case because there apparently is no shift selection provision in that contract.

It is important to emphasize that the Union's proposal on the issue of shift preference actually may be adopted only if the Union's proposal on normal workday had

been adopted. Even though this issue of shift preference, if considered separately from the normal workday issue, is non-economic in nature, the fact that the Union included its proposed language as part of its proposal on the economic issue of normal workday means that this Arbitrator is without authority to sever the shift preference language from the Union's proposal on the economic issue of normal workday. It also must be noted that at the hearing in this matter, the Union offered to sever its proposed language on these two issues, but the Village refused to allow the Union to do so, citing the Union's insistence that the parties trade final proposals in advance of the hearing. The Village's refusal on this point occurred despite the fact that the Union agreed to allow the Village to submit a proposal on the impasse issue of distribution of overtime as part of the Village's post-hearing brief after the Village failed to submit any proposal on that issue when the parties exchanged their final proposals in advance of the hearing.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of shift preference is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

5. Article IX, Section 4 – Non-Employment Elsewhere

The Union's final offer on the impasse issue of non-employment elsewhere is as follows:

A leave of absence will not be granted to enable an employee to try for or accept employment elsewhere or for self-employment. Any employee who engages in employment elsewhere (including self-employment) while on any leave of absence as provided above may be immediately terminated by the Village, provided that this provision shall not be applicable to a continuation of

employment (including self-employment) that the employee had prior to going on an approved leave of absence, as long as there is no significant expansion of such employment (including self-employment) or unless approved in writing by the Village Manager.

This provision further shall not apply in circumstances when a covered employee is on an unpaid leave related to a medical or psychological condition which prevents the employee from resuming full unrestricted duties as a police officer, provided that the employee is not engaged in secondary employment as a law enforcement or armed security.

The Village's final offer on the impasse issue of non-employment elsewhere is as follows:

A leave of absence will not be granted to enable an employee to try for or accept employment elsewhere or for self-employment. Any employee who engages in employment elsewhere (including self-employment) while on any leave of absence as provided by above may be immediately terminated by the Village. This provision shall not be applicable to a continuation of employment (including self-employment) that the employee had prior to going on an approved leave of absence, as long as there is no significant expansion of such employment (including self-employment) and the employment is not inconsistent with any medical restrictions or the purpose of the unpaid leave or unless approved in writing by the Village Manager. Such approval shall not be unreasonably denied.

As is common in police departments, many of the Village's officers, including the sergeants, have second jobs. In most circumstances, secondary employment does not have much, if any, impact upon a sergeant's ability to perform his or duties with the Department. The substantive differences in the parties' proposals on this issue of non-employment elsewhere focuses on one situation where secondary employment may have a negative impact upon a sergeant's ability to perform his or her Departmental duties – when a sergeant is on an unpaid leave of absence for medical reasons, including psychological reasons.

When a sergeant is on a leave of absence from the Department for medical

reasons, that sergeant's primary obligation to the Department is to recover as quickly as possible from whatever medical condition prompted the leave and then return to active duty. If a sergeant on such a leave engages in secondary employment during the course of that leave, it is possible that the secondary employment will interfere with the sergeant's recovery. Each of the parties' proposals attempts to strike a balance between the need for the sergeant to return to active duty with the Department as quickly as possible and the sergeant's need to meet his or her financial obligations while on an unpaid leave of absence.

Pursuant to the Union's proposal, a sergeant on an unpaid leave of absence for medical reasons would not be subject to discipline for engaging in secondary employment during that leave, so long as the secondary employment does not involve work in law enforcement or armed security. By advancing a proposal that essentially prohibits a sergeant on an unpaid medical leave from engaging in secondary employment in the areas of law enforcement or armed security, the Union is attempting to address the legitimate concern that the demands of certain types of secondary employment would hinder a sergeant's recovery and delay the sergeant's return to active duty.

The problem with the Union's proposal is that it would allow a sergeant on an unpaid medical leave of absence to engage in other forms of physically and/or mentally strenuous secondary employment. There can be no serious question that such a situation could seriously hinder a sergeant's ability to recover from the medical condition that prompted the unpaid leave.

The Village addresses this same quandary by proposing that continuation during

an unpaid medical leave of secondary employment that predates that unpaid leave of absence shall not subject a sergeant to discipline so long as the secondary employment is not inconsistent with any medical restrictions or with the purpose of the unpaid leave, or if the Village Manager has given written consent that the sergeant may engage in the secondary employment while on unpaid leave, with such consent not to be unreasonably denied. The Village's proposal carries uncertainties and problems of its own, particularly with regard to issues that inevitably will arise over whether any denial of the Village Manager's consent has been reasonable or unreasonable.

A comparison of these two proposals conclusively shows, however, that the Village's proposal is more reasonable and appropriate in establishing what types of secondary employment are appropriate for a sergeant on an unpaid leave. The Union has argued that a number of problems and delays will arise from the Village's inclusion of a provision calling for the Village Manager's written consent. A reading of the Village's proposal as a whole, however, reveals that cases in which the Village Manager's consent would be required should be relatively few in number. Under the Village's proposal, no such consent will be required for a sergeant on an unpaid medical leave to engage in secondary employment that pre-dates the leave if that employment is not inconsistent with any medical restrictions that have been imposed upon the sergeant. Moreover, no such consent would be required for a sergeant on any sort of unpaid leave to engage in secondary employment that is not inconsistent with the purpose of the leave.

As the parties move forward under their new collective bargaining agreement, there certainly will be grievances that arise as to whether various types of secondary

employment are or are not prohibited by this provision. The Union, in particular, has warned of the dire consequences to a sergeant's financial position from a lengthy grievance and arbitration process over whether, for example, the Village Manager unreasonably denied consent. A sergeant's financial situation certainly could take a serious hit under these circumstances.

The fact is, though, that such problems may arise no matter which of the parties' proposals is adopted here. Moreover, the parties will be able to resolve these problems only as they implement and operate under their new collective bargaining agreement. Unfortunately, it absolutely is impossible to develop a perfect collective bargaining agreement that precludes the possibility of future disputes over the interpretation and application of its terms, thereby also precluding the possibility that covered employees might be harmed by the delays and other factors associated with these disputes. The fact that such disputes might, and almost certainly will, arise is no reason by itself for refusing to adopt any party's proposal on an issue.

As for the relevant statutory factors, a comparison of employment restrictions during leaves that exist in the external comparables reveals that there is no majority approach. In several of these communities, the issue is not addressed in current collective bargaining agreements and/or municipal policies. One of these communities prohibits secondary employment during medical or disability leave, while others make outside employment during disability leave subject to a police chief's review and revocation. Overall, however, the Village's proposal is more in line with the range established across the external comparables. With regard to the internal comparison with the contract

covering the Village's patrol officers, this other contract does contain a provision on this issue that is identical to the first paragraph of the Union's proposal, but does not address the particular matter of secondary employment during an unpaid medical leave. This internal comparison therefore is of no practical assistance here.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of non-employment elsewhere is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

6. Article XIII, Section 2 – Discipline

The Union's final offer on the impasse issue of discipline is as follows:

The parties agree that all disciplinary action, including but not limited to suspension, demotion and termination, shall be for just cause. Disputes regarding disciplinary matters shall be resolved pursuant to the grievance procedure described in Article V. Disciplinary suspensions shall be calculated in calendar days, in eight-hour increments.

The Village's final offer on the impasse issue of discipline is as follows:

The parties agree that all disciplinary matters shall continue to be subject to the authority and jurisdiction of the Village of Western Springs Board of Fire and Police Commissioners. Accordingly, the parties agree that the sole recourse for the appeal and review of discipline shall be with the Board of Fire and Police Commissioners and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. Provided, however, the BFPC shall be without authority to enhance the discipline imposed by the Chief (suspensions up to 5 days) and the burden of proof in both appeals of discipline and imposition of discipline shall be on the Chief.

Before taking final action to suspend a non-probationary employee for five (5) days or less without pay and before filing formal charges with the Board of Fire and Police Commissioners requesting that a non-probationary employee be suspended for more than five (5) days or terminated, the Director of Law Enforcement Services shall inform the non-probationary employee of the basis for

the intended disciplinary action and give the non-probationary employee an opportunity to respond. Upon request, the employee is entitled to Union representation.

The discussion and resolution of the impasse issue of the definition of "grievance," set forth in a preceding section of this Decision and Award, requires adoption of the Union's proposal on the impasse issue of discipline. Because the contractual definition of "grievance" includes disputes over disciplinary matters, and because grievance arbitration is available as an alternate means of reviewing disciplinary action, then it absolutely is necessary that the contractual provision on discipline appropriately reflect what terms shall apply when an employee opts to seek review of a disciplinary matter through the grievance arbitration process.

The Union's proposal on this issue properly addresses the fact that grievance arbitration is an option for employees who wish to challenge any discipline imposed upon them, while the Village's proposal cannot be adopted because it seeks to maintain the Board of Fire and Police Commissioners' sole jurisdiction over the disciplinary review process. As discussed above, such sole jurisdiction does not provide the benefits to all concerned that are available through offering employees the right to elect either grievance arbitration or the Board of Fire and Police Commissioners as the means of reviewing disciplinary action.

There is one aspect of the Union's proposal that does raise concerns. The language proposed by the Union does not adequately reflect the fact that the grievance arbitration review of discipline is a matter of employee election. The Union's proposed language might even be read as suggesting that grievance and arbitration of a disciplinary

dispute is mandatory. Because the impasse issue of discipline is non-economic in nature, this Arbitrator has the authority to resolve this impasse issue by modifying the parties' proposals or even crafting a wholly new compromise proposal. It is not necessary to craft a new compromise proposal here because a relatively minor modification to the Union's proposal will suffice to address the aforementioned concerns.

In accordance with these considerations, and to better reflect the fact that employees have the right to choose the forum in which they will seek review of disciplinary action, the Union's language must and shall be modified as follows:

The parties agree that all disciplinary action, including but not limited to suspension, demotion and termination, shall be for just cause. In the event that a covered employee elects to dispute disciplinary action by pursuing a grievance under the grievance and arbitration procedure of this Agreement, then such disputes regarding disciplinary matters shall be resolved pursuant to the grievance procedure described in Article V. Disciplinary suspensions shall be calculated in calendar days, in eight-hour increments.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of discipline, as modified by this Arbitrator, is more appropriate. Accordingly, the Union's proposal on this issue, as modified by this Arbitrator, shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

7. Article XIII, Section 12 – Board of Fire and Police Commissioners

The Union's final offer on the impasse issue of Board of Fire and Police Commissioners is as follows:

Promotions and reduction in rank for probationary Sergeants are subject to the jurisdiction of the Village of Western Springs Board of Police and Fire Commissioners, however, all other disciplinary matters are subject to the

grievance and arbitration procedure set forth in this Agreement.

The Village's final offer on the impasse issue of Board of Fire and Police Commissioners is that the parties' collective bargaining agreement should not contain a provision on this issue.

In light of the analyses and resolutions of the impasse issues of the definition of "grievance," the election of grievance arbitration for discipline, and discipline, all set forth above, there can be no question that it is necessary to adopt the Union's proposed language on this impasse issue of the Board of Fire and Police Commissioners. The Union's proposal serves to delineate which matters remain subject to the sole jurisdiction of the Board and which may, at the employee's option, go either to grievance arbitration or before the Board. The Union's proposal is in accordance with the provisions that have been adopted on the aforementioned discipline-related issues, and it is a necessary complement to those provisions.

This Arbitrator again has concerns with some of the language of the Union's proposal, and these concerns again relate to the fact that the proposed language might be read as suggesting that grievance arbitration of disciplinary matters is mandatory. It absolutely is necessary that this provision addressing the jurisdiction of the Board of Fire and Police Commissioners clearly and unambiguously reflects the fact that the employee has the option of seeking review of discipline either through the grievance arbitration process or before the Board of Fire and Police Commissioners. There absolutely is no requirement that the grievance arbitration process be used to resolve any particular disciplinary dispute; it is entirely a matter of the employee's choice.

Because the impasse issue of the Board of Fire and Police Commissioners is non-economic in nature, this Arbitrator has the authority to resolve this impasse issue by modifying the parties' proposals or even crafting a wholly new compromise proposal. It is not necessary to craft a new compromise proposal here because a relatively minor modification to the Union's proposal will suffice to address the aforementioned concerns.

In accordance with these considerations, and to better reflect the fact that employees have the right to choose the forum in which they will seek review of disciplinary action, the Union's language must and shall be modified as follows:

Promotions and reduction in rank for probationary Sergeants are subject to the jurisdiction of the Village of Western Springs Board of Police and Fire Commissioners, however, all other disciplinary matters are subject to the grievance and arbitration procedure set forth in this Agreement, in the event that a covered employee elects to dispute disciplinary action by pursuing a grievance under the grievance and arbitration procedure of this Agreement.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of the Board of Fire and Police Commissioners, as modified by this Arbitrator, is more appropriate. Accordingly, the Union's proposal on this issue, as modified by this Arbitrator, shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

8. Article XIII, Section 15 – Paycheck Availability

The Union's final offer on the impasse issue of paycheck availability is as follows:

Each bargaining unit employee may be paid via direct deposit of the employee's paycheck to the bank of the employee's choosing.

The Village's final offer on the impasse issue of paycheck availability is as follows:

Each bargaining unit employee shall be paid via direct deposit of the employee's paycheck to the bank of the employee's choosing.

The difference between the competing proposals on the issue of paycheck availability involves whether direct deposit of paychecks shall be voluntary or mandatory. Both parties refer to the fact that the Illinois Wage Payment and Collection Act allows an employee to opt for a paper check, although the Village correctly notes that a collective bargaining agreement may supersede the provisions of the Wage Act.

There is no data in the record from the external comparables on this particular issue, so no comparison there is possible. Internally, the patrol officers' collective bargaining agreement contains the exact provision that the Village is proposing for inclusion in the sergeants' contract, so the internal comparison weighs in favor of the Village's proposal.

The record establishes that the Union's proposal that direct deposit be voluntary is based on the preferences of one of the sergeants. The personal choice of one member of the bargaining unit simply does not outweigh the benefits to the Village and to the bargaining unit that stem from direct deposit. Direct deposit allows for administrative streamlining of the payroll process, along with reduced operational expenses. Moreover, direct deposit is safer and more secure for employees. Employers generally are moving toward direct deposit of paychecks, as is the federal government with regard to benefit checks.

The circumstances surrounding this issue leave no doubt that the Village's proposal on this issue is more reasonable, and more beneficial to all parties. There is no

reasonable basis for creating a different system of paycheck availability for the Department's sergeants than that which exists for the Department's patrol officers.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of paycheck availability is more appropriate.

Accordingly, the Village's proposal on this issue shall be included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

9. Article XIII, Section 22 – Physical Fitness Requirements

The Union's final offer on the impasse issue of physical fitness requirements is as follows:

In order to maintain efficiency in the Police Department, to protect the public, to promote the health and fitness of the covered employees, and to reduce insurance costs and risks, the Village shall cooperate with the Chapter in establishing a voluntary physical fitness program which is not gender or age-specific and is otherwise not discriminatory. In the event that covered employees make a good-faith effort to meet such physical fitness goals but fail to meet the agreed goals, the Village and Chapter will cooperate to develop individual physical fitness plans for the effected employee which is non-disciplinary in nature.

The Village's final offer on the impasse issue of physical fitness requirements is as follows:

In order to maintain efficiency in the Police Department, to protect the public, and to reduce insurance costs and risks, the Village shall, beginning after April 1, 2010, establish as its mandatory physical fitness requirements for full-time sworn officers the State of Illinois Physical Fitness Training Standards. The Standards are attached hereto as Appendix C. Employees are required to make a good-faith effort to meet such fitness standards. Prior to April 1, 2011, there shall be no discipline for failure to meet the standards provided the officer makes a good-faith effort to meet such standard. Effective April 1, 2011, officers who fail to record a composite score of 95 percent of the minimum standards for such test(s), shall be subject to the following discipline.

- (a) For the first such failure, the officer shall be re-tested on the section(s) failed previously, after sixty (60) days or more, at the Employer's discretion, and if the employee is successful on such retest, no further action shall be taken by the Employer. If the officer fails the retest, he shall be given a one (1) day suspension without pay and be given a further test no sooner than thirty (30) days after the last test. Provided, however, an officer shall not receive the one (1) day suspension solely for failing to meet the run standard as long as he completes the run and makes a good faith effort to meet the standard;
- (b) Employees who have failed the second retest in accordance with section (a) above, shall receive an additional two (2) day suspension without pay, and no further test shall be required of the officer for the remainder of the testing year. Provided, however, an officer shall not receive the two (2) day suspension solely for failing to meet the run standard as long as he completes the run and makes a good faith effort to meet the standard.

The Employer shall not require an officer who has passed the test to submit to physical fitness standards testing pursuant to this Section more than once during each calendar year of this Agreement. Effective April 1, 2011, employees disciplined under the terms of this section shall not be disciplined more than as provided in paragraphs (a) and (b) above, for failure to pass the physical fitness standards test, during the testing year.

An employee shall receive at least thirty (30) days notice of the first physical fitness test each year. An employee will be compensated at the appropriate hourly rate in accordance with Article VII, Section V for all hours actually participating in the physical fitness testing under Appendix C. Effective April 1, 2011, an employee who meets the minimum standards under all the sections set forth in Appendix C during a calendar year, including the run standard, shall receive \$200.00 to be paid on or before December 31 of the calendar year.

There can be no serious question that physical fitness standards for first responders are of major importance. Police sergeants must be ready to respond to any number of different physically and mentally challenging situations, so it is entirely reasonable for the parties' new collective bargaining agreement to include a provision that addresses

their physical fitness. The fact that both of the parties have offered language on this issue demonstrates that they do agree that it is necessary to develop and implement some sort of physical fitness standard, although they do not yet agree on the precise details.

The Union's proposal on this point is more vague than the Village's proposal. The Union's proposal does not identify any particular fitness standard that will apply to the sergeants, but instead provides that the Village is to cooperate with the Union in the development of such a standard. This proposal does specify that failure to meet the adopted standard upon a good-faith attempt shall not result in discipline of any kind, and it again provides that the Village will cooperate with the Union in developing individual fitness plans for employees who fail to meet the standard that ultimately is adopted.

The Village's proposal provides far more detail. Among other things, the Village targets dates for the implementation of a fitness standard and for the imposition of disciplinary consequences for failure to meet the adopted standard. In addition, the Village proposes the adoption of the existing State of Illinois Physical Fitness Training Standards, and it has set forth a detailed response system, including discipline, in the event that an individual employee does not meet the standard.

The Union has asserted that the State of Illinois Physical Fitness Training Standards may be discriminatory on the basis of age and gender, although it has not precisely explained in what way these fitness standards may discriminate. The record indicates that there is some dispute as to whether employment-related fitness standards should account for age and/or gender difference, or should impose absolute standards that apply to all. A review of the fitness standards imposed by the Village demonstrates that

there are different performance levels to offset age- and/or gender-based differences, yet these different performance levels still are rigorous enough to ensure that different individuals are physically capable of performing all of their duties. In this way, the Village's proposed standard attempts to fill a middle ground between absolute standards, on the one hand, and age- and/or gender-based standards on the other.

A comparison of the two proposals conclusively shows that the Village's is more reasonable. By incorporating an existing set of fitness standards, the Village's proposal may be implemented concurrently with the parties' new contract. The Union's proposal, on the other hand, essentially calls for continued negotiations over the details of the fitness standard to be adopted, as well as the response to any failure to meet the standard. The Union's proposal does not ensure the adoption of a standard by any particular date, and the possibility exists that the process of negotiating, developing, agreeing upon, and implementing a fitness standard could significantly delay the actual implementation of a fitness standard.

Both of the parties explicitly refer to the importance of a fitness standard by pointing to the impact of such a standard on the Police Department's efficiency, the Department's ability to protect the public, and the need to reduce insurance costs and risks. These issues emphasize how essential it is that a physical fitness standard be adopted and implemented as soon as possible. The Village's proposal allows for the quick adoption and implementation of a tested, complete, and fair set of physical standards, while the Union's proposal could result in more delay, not to mention the possibility of more discord between the parties.

The Village's proposal offers a further benefit in that it already incorporates a specific, detailed, and ultimately fair process for handling situations in which a sergeant, despite a good-faith effort, does not meet the fitness standard. The fact that the Union's proposal on this point does nothing more than call for a cooperative effort to develop such a process again raises the possibility of more delay and more disputes.

With regard to this particular issue, the relevant statutory factors certainly do favor adoption of the Village's proposal. Not all of the external comparables have included provisions in their contracts that address physical fitness. Of those that have, however, most or all have adopted the same type of fitness standard that is set forth in the Village's proposal. Some of the external comparables treat the fitness standard as voluntary, while LaGrange Park treats it as mandatory, as does the Village's proposal. As for what happens if an employee does not meet the established fitness standard, LaGrange Park's contract does not impose any disciplinary sanctions for a sergeant's failure to meet its mandatory standard. None of the external comparables that impose a physical fitness standard impose any kind of discipline for a failure to meet that standard, and Clarendon Hills offers benefit time if a sergeant passes all parts of the test.

The inclusion of a disciplinary component in the Village's proposal represents a breakthrough when compared with what appears in the contracts of the external comparables, but the carrot-and-stick approach incorporated therein, with a monetary benefit for passing all parts of the fitness test and discipline imposed only after a sergeant fails a second retest, is a reasonable one. The proposed disciplinary response is limited in nature, and it apparently reflects the Village's recent experience as to the sergeants' lack

of participation in a purely voluntary fitness program during the course of the parties' negotiations over their new collective bargaining agreement. Under the circumstances, the narrow and limited disciplinary component in the Village's proposal cannot be deemed unreasonable or inappropriate, and it is justified by the sergeants' lack of participation in the voluntary fitness program over the past few years.

As for the internal comparison with the contract covering the Department's patrol officers, the Village's proposal essentially tracks what appears in that other collective bargaining agreement. The only differences are that the proposal here incorporates specific dates after which discipline would be imposed for failure to meet the newly imposed fitness standard, which allows for an appropriate period of time to phase in the fitness requirement before any disciplinary penalty would apply to the sergeants. Administratively and operationally, it is far more efficient for all of the Department's members to adhere to a single physical fitness standard.

The only other statutory factor that applies to this particular issue is the interest of the public. The community has an obvious interest in the physical fitness of the members of its Police Department. The Western Springs community relies on its Department for first-response emergency assistance, and the Department's ability to provide such demanding assistance is significantly enhanced if its members, including its sergeants, are physically fit.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Village's proposal on the issue of physical fitness requirements is more appropriate. Accordingly, the Village's proposal on this issue shall be included within the parties' new

collective bargaining agreement, and it is set forth in the Appendix attached hereto.

Award

This Arbitrator finds that the language set forth in the attached Appendix shall be adopted and incorporated into the parties' new collective bargaining agreement.



PETER R. MEYERS
Impartial Arbitrator

**Dated this 28th day of July 2010
at Chicago, Illinois.**

APPENDIX

ARTICLE V – GRIEVANCE PROCEDURE

Section 1. Definition of “Grievance.” In the event that a covered employee elects to dispute his or her discharge by pursuing a grievance under the grievance and arbitration procedure of this Agreement, then that grievance shall advance directly to Arbitration.

Section 6. Election of Grievance Arbitration for Discipline. Prior to imposing discipline, the Chief of Police or the Chief’s designee will set a meeting with the employee to advise the employee of the proposed discipline and the factual basis therefore, in writing. At the employee’s request, the employee shall be entitled to Union representation at that meeting. After the conclusion of said meeting, the Chief or the Chief’s designee will issue a Decision to Discipline, in writing, as to the proposed discipline (“Decision to Discipline”), to the affected employee and the Union. At the employee’s option, disciplinary action against the employee may be contested either through the arbitration procedure of this Agreement or through the Board of Fire and Police Commissioners (“BOFPC”), but not both. In order to exercise the arbitration option, an officer must execute an Election, Waiver and Release form (“Election Form” attached as Appendix D). This Election Form and disciplinary process is not a waiver of any statutory or common law right or remedy other than as provided herein. The Election Form shall be given to the officer by the employer, at the time the officer is formally notified of the Decision to Discipline.

The employee shall have three (3) calendar days to submit a copy of the Election Form and Decision to the Union for approval to arbitrate the discipline. The Union shall have an additional seven (7) calendar days to approve or deny the request for arbitration. If the Union authorizes an arbitration concerning the discipline, it shall notify the Chief or the Chief’s designee in writing of the intent to arbitrate within ten (10) calendar days of the issuance of the Decision to Discipline. If approved by the Union for arbitration, the Election Form shall constitute a grievance which shall be deemed filed at the arbitration step of the grievance procedure. When a grievance is elected, the arbitrator will determine whether the discipline was imposed with just cause, and whether the discipline was excessive. If the arbitration is not approved by the Union within ten (10) calendar days of the Decision to Discipline, or is not elected by the employee, the employee retains his rights to appeal discipline before the Village of Western Springs Fire & Police Commission in accordance with the Illinois Municipal Code, Division 2.1, Board of Fire and Police Commissioners, 65 ILCS 5/10-2.1 *et seq.*, as amended.

ARTICLE VIII – HOURS OF WORK AND OVERTIME

Section 2. Normal Workday. The normal workday for employees shall be between 8 and 12 hours, at the discretion of the Police Chief or his designee. An eight (8) hour workday will include two paid 15-minute break periods and one paid 30-minute meal break taken at times approved by the immediate supervisor. A twelve (12) hour workday will include two (2) thirty minute meal breaks and two (2) fifteen minute breaks taken at times approved by the immediate supervisor. Employees remain subject to call during all break times and the fact that employees are not able to take said breaks as a result of calls or the assignment of other duties shall not result in the payment of any overtime, compensatory time or additional compensation.

Section 10. Distribution of Overtime. Distribution of overtime will be as follows:

- (a) If an oncoming shift is understaffed, Dispatch will call the most Senior Officer (including all Sergeants) who is on the opposite day off. If no such Officer (including Sergeants) is available, in order of seniority, volunteers will be asked to stay over. If no Officer (including Sergeants) volunteers, the least senior officer will be ordered to stay to cover the first half of the shift. The least senior officer from the next shift will then be ordered to cover the remainder of the shift.
- (b) Scheduled overtime more than 24 hours in advance, including any outside details, will be distributed on a rotating seniority basis.

Should a Sergeant demonstrate that he has been wrongly denied an overtime opportunity, his sole remedy will be the opportunity to work the next available overtime in accordance with the procedure in effect.

Section 11. Roll Call Preparation Time. Sergeants will be compensated for roll call preparation in accordance with the 28 day FLSA work cycle referenced in Section 3 above. Roll call preparation time outside the regular work schedule must be approved by the Police Chief or his designee.

Section 12. Shift Preference. Annually, the Chief will request that sergeants submit a request to the Police Chief or his designee, on a form provided by the Police Department, to be assigned to a particular shift. The Police Chief shall make the final decision on the shift assignment and days off, based upon operational considerations and qualifications. Nothing contained herein shall preclude the Police Chief from later reassigning an employee or employees to another shift.

ARTICLE IX – LEAVES OF ABSENCE

Section 2. Emergency/Bereavement Leave. An employee may be granted an emergency leave of absence of up to three (3) days without loss of pay in cases of death or serious illness of a member of the employee's family, defined as the employee's spouse, child, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandparent, or other relative that the Village Manager may on a case-by-case basis approve. The purpose of such leave shall be to attend the funeral (including making arrangements for the funeral) in case of death or to permit the employee to be present in case of serious illness.

Section 4. Non-Employment Elsewhere. A leave of absence will not be granted to enable an employee to try for or accept employment elsewhere or for self-employment. Any employee who engages in employment elsewhere (including self-employment) while on any leave of absence as provided by above may be immediately terminated by the Village. This provision shall not be applicable to a continuation of employment (including self-employment) that the employee had prior to going on an approved leave of absence, as long as there is no significant expansion of such employment (including self-employment) and the employment is not inconsistent with any medical restrictions or the purpose of the unpaid leave or unless approved in writing by the Village Manager. Such approval shall not be unreasonably denied.

ARTICLE X – VACATIONS

Section 6. Personal Days. Each employee covered by this Agreement who was employed on or before December 31 shall be granted three (3) personal days (at eight (8) hours per day) for use during the following calendar year. The personal days must be scheduled at least three (3) days in advance.

ARTICLE XI – SALARIES

Section 1. Salaries. Effective April 1, 2009, each sergeant shall receive an equity adjustment of 1.5% to the sergeant's base pay. This salary increase shall be retroactive for all sergeants still on the active payroll of the Village on the effective date of this Agreement. Effective April 1, 2010, employees shall be paid on the basis of the following minimum annual salaries for each of the following steps.

Effective April, 2010

Probationary	\$78,682.80
A	\$80,528.00

B	\$82,373.70
C	\$84,219.15

The Village and Union will reopen negotiations for the purpose of negotiating over the annual salaries to be effective April 1, 2011. If the parties are unable to reach agreement during this reopener, the dispute shall be resolved in accordance with the alternative impasse resolution process set forth in Appendix A, except that the notice dates shall not be applicable.

Section 2. Step Increments. Beginning after April 1, 2010, advancement from the Probationary Step to Step A shall be upon successful completion of the probationary period and advancement from Step A to Step B and Step B to Step C shall be at twelve month intervals.

To be eligible for step advancement the employee must meet departmental standards during the evaluation period, provided that the employee shall not be arbitrarily denied a step advancement.

ARTICLE XII – INSURANCE

Section 1. Insurance. The hospitalization and medical insurance program (including a PPO and HMO alternative) in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village retains the right to change insurance carriers, PPO's, HMO's, or to self-insure (as a stand alone entity or with a group of municipalities) as it deems appropriate, so long as the new basic coverage and new basic benefits are relatively similar to those which predated this Agreement.

However, in recognition of the desirability of maintaining uniform coverages, benefits and costs, Village wide and notwithstanding the foregoing provisions regarding relatively similar basic coverages and benefits, the parties agree that if the Village makes any modification with respect to health insurance coverage, benefits or costs that are applicable to other full time non-bargaining Village employees generally, then such modifications in coverage, benefits and costs shall likewise be applicable to the employees covered by this Agreement, on the same terms and on the same date that they are applicable to other regular full-time non-bargaining unit Village employees generally (e.g., if full-time regular non-bargaining unit employees are required to pay a co-pay for doctor's visits, then bargaining unit employees shall automatically be required to pay the same amount at the same time). Notwithstanding the above, bargaining unit employees shall pay no more than the following monthly premiums for insurance coverage.

Employees may select single or family coverage during the enrollment

period established by the Village. The employee shall pay the following amounts in monthly premiums or cost for single or family coverage, whichever is applicable, for participation in either the Village's Group Hospitalization and Major Medical Program, PPO or an HMO and said amount shall be deducted from the employee's paycheck:

Effective	Gross Monthly Premium
<u>April 1, 1999</u>	<u>Employee Contribution</u>
Single	10%
Family	20%

Section 7. Dental Insurance. Bargaining unit employees shall be covered by the same dental insurance applicable to full-time non-bargaining unit employees generally, as the plan and benefits may, from time to time be amended. Effective April 1, 2010, the bargaining unit employees shall pay the entire premium applicable to the coverage selected, as it may from time to time be amended.

ARTICLE XIII – MANAGEMENT RIGHTS

Section 2. Discipline. The parties agree that all disciplinary action, including but not limited to suspension, demotion and termination, shall be for just cause. In the event that a covered employee elects to dispute disciplinary action by pursuing a grievance under the grievance and arbitration procedure of this Agreement, then such disputes regarding disciplinary matters shall be resolved pursuant to the grievance procedure described in Article V. Disciplinary suspensions shall be calculated in calendar days, in eight-hour increments.

Section 8. Outside Employment. No employee shall engage in outside employment (which includes self-employment) unless the Director of Law Enforcement Services, in accordance with such rules and regulations as he may from time to time prescribe, has approved outside employment. The current General Order addressing outside employment is attached hereto as Appendix D.

Section 12. Board of Fire and Police Commissioners. Promotions and reduction in rank for probationary Sergeants are subject to the jurisdiction of the Village of Western Springs Board of Police and Fire Commissioners, however, all other disciplinary matters are subject to the grievance and arbitration procedure set forth in this Agreement, in the event that a covered employee elects to dispute disciplinary action by pursuing a grievance under the grievance and arbitration procedure of this Agreement.

Section 15. Paycheck Availability. Each bargaining unit employee shall be paid via direct deposit of the employee's paycheck to the bank of the employee's choosing.

Section 22. Physical Fitness Requirements. In order to maintain efficiency in the Police Department, to protect the public, and to reduce insurance costs and risks, the Village shall, beginning after April 1, 2010, establish as its mandatory physical fitness requirements for full-time sworn officers the State of Illinois Physical Fitness Training Standards. The Standards are attached hereto as Appendix C. Employees are required to make a good-faith effort to meet such fitness standards. Prior to April 1, 2011, there shall be no discipline for failure to meet the standards provided the officer makes a good-faith effort to meet such standard. Effective April 1, 2011, officers who fail to record a composite score of 95 percent of the minimum standards for such test(s), shall be subject to the following discipline.

- (a) For the first such failure, the officer shall be re-tested on the section(s) failed previously, after sixty (60) days or more, at the Employer's discretion, and if the employee is successful on such retest, no further action shall be taken by the Employer. If the officer fails the retest, he shall be given a one (1) day suspension without pay and be given a further test no sooner than thirty (30) days after the last test. Provided, however, an officer shall not receive the one (1) day suspension solely for failing to meet the run standard as long as he completes the run and makes a good faith effort to meet the standard;
- (b) Employees who have failed the second retest in accordance with section (a) above, shall receive an additional two (2) day suspension without pay, and no further test shall be required of the officer for the remainder of the testing year. Provided, however, an officer shall not receive the two (2) day suspension solely for failing to meet the run standard as long as he completes the run and makes a good faith effort to meet the standard.

The Employer shall not require an officer who has passed the test to submit to physical fitness standards testing pursuant to this Section more than once during each calendar year of this Agreement. Effective April 1, 2011, employees disciplined under the terms of this section shall not be disciplined more than as provided in paragraphs (a) and (b) above, for failure to pass the physical fitness standards test, during the testing year.

An employee shall receive at least thirty (30) days notice of the first

physical fitness test each year. An employee will be compensated at the appropriate hourly rate in accordance with Article VII, Section V for all hours actually participating in the physical fitness testing under Appendix C. Effective April 1, 2011, an employee who meets the minimum standards under all the sections set forth in Appendix C during a calendar year, including the run standard, shall receive \$200.00 to be paid on or before December 31 of the calendar year.